

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

C.A. NO. 5:96CV91

THE STATE OF TEXAS

VS

THE AMERICAN TOBACCO COMPANY; R.J. REYNOLDS
TOBACCO COMPANY; BROWN & WILLIAMSON TOBACCO
CORPORATION; B.A.T. INDUSTRIES, P.L.C.; PHILIP
MORRIS, INC.; LIGGETT GROUP, INC.; LORILLARD
TOBACCO COMPANY, INC.; UNITED STATES TOBACCO
COMPANY; HILL & KNOWLTON, INC.; THE COUNCIL
FOR TOBACCO RESEARCH - USA, INC. (Successor
to Tobacco Institute Research Committee);
and THE TOBACCO INSTITUTE, INC.

VIDEOTAPED

ORAL DEPOSITION

OF

OTIS L. GRAHAM, JR.

July 24, 1997

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COPY

ANSWERS AND DEPOSITION OF OTIS L.

GRAHAM, JR., produced as a witness at the instance of the Plaintiff, taken in the above-styled and -numbered cause on the 24th day of July, 1997, before Jamie K. Israelow, a Certified Shorthand Reporter in and for the State of Texas, Registered Professional Reporter, at the offices of Shook, Hardy & Bacon, L.L.P., located at 801 Pennsylvania, Suite 600, Washington, D.C., in accordance with the Federal Rules of Civil Procedure and the agreements hereinafter set forth.

A P P E A R A N C E S

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P R O C E E D I N G S

THE REPORTER: Are there any agreements for the record?

MR. MORRIS: We'll just take it pursuant to the Federal Rules. And as I understand, the Rules that are in place are no objections can be made other than those as privileged.

As far as reading and signing his deposition --

MR. PURVIS: We're --

MR. MONICA: They're reserved.

MR. PURVIS: We'd like for him to read and sign.

MR. MORRIS: Okay.

THE VIDEOGRAPHER: This is the videotaped deposition of Otis Graham, taken by the plaintiff in the case of the State of Texas versus the American Tobacco Company, et al. Cause Number 5-96CV91, filed in the United States District Court, Eastern District of Texas, Texarkana Division, taken on July 24th, 1997 at the time shown on the video screen.

The court reporter is Jamie Israelow.

09 1 My name is Guy Tubbs, and I am
2 the legal video specialist.

3 Counsel, now please introduce
4 themselves.

09:09 5 MR. MORRIS: This is Jim Morris
6 for the Plaintiffs.

7 MR. PURVIS: Allen Purvis with
8 Shook, Hardy & Bacon for Lorillard Tobacco
9 Company.

09:10 10 MR. STOEVEER: Thomas W. Stoever,
11 Jr. from Arnold & Porter for Philip Morris,
12 Incorporated.

13 MR. MONICA: John C. Monica, Jr.
14 for Lorillard.

09:10 15 MS. TYLER: Julia Tyler of
16 Johnson & Tyler for Philip Morris.

17 MS. JOHNSON: Jan Johnson of
18 Johnson & Tyler, Phillip Morris.

19 THE VIDEOGRAPHER: The court
09:10 20 reporter will now swear the witness.

21 OTIS L. GRAHAM, JR.,
22 the witness hereinbefore named, having been first
23 duly cautioned and sworn to testify the truth, the
24 whole truth, and nothing but the truth, testified
25 on his oath as follows:

EXAMINATION

BY MR. MORRIS:

Q Please state your full name for the record.

A Otis L. Graham, Jr.

Q Where do you live, Mr. Graham?

A I live in [DELETED]

Q And how are you currently employed?

A I am a visiting professor at the University of North Carolina, Wilmington.

Q How long have you been there?

A This -- I completed my second year.

Q Where are you visiting from?

A They call me a visiting professor.

That doesn't imply visiting. I guess the answer to that is University of California, Santa Barbara.

Q All right. Are you a tenure profession at the University of California, Santa Barbara?

A I'm an emeritus professor.

Q What does that mean?

A It means you are retired.

Q Okay. All right. Where were you born and raised?

09:11 1 A I was born in Little Rock, Arkansas.

2 Q All right. Where did you go to high
3 school?

4 A After a period of years in Texarkana,
09:11 5 we moved to Nashville, Tennessee and that's where
6 I went to high school.

7 Q After your -- what year did you get
8 out of high school?

9 A 1953.

09:11 10 Q What did you do after you got out of,
11 high school?

12 A I attended Yale University.

13 Q What did you study at Yale?

14 A A lot of things, but my major --

09:11 15 Q Okay.

16 A -- was history.

17 Q All right. And did you receive a
18 degree in history from Yale?

19 A Yes. I received a BA degree.

09:11 20 Q Okay.

21 A With a major in history.

22 Q All right. Following Yale where did
23 you go to school?

24 A Following Yale I went in the Marine
25 Corps.

09:12 1 Q Okay. What years were you in the
2 Marine Corps?

3 A '57 to '60.

4 Q What did you do in the Marine Corps?

09:12 5 A I was an artillery officer.

6 Q During those years, did you continue
7 any study, active study, in the field of history?

8 A Yes.

9 Q Was it any formal type of study or
09:12 10 were you just reading things on your own and
11 researching on your own?

12 A I was an avid reader, and I visited
13 museums, but I was an avid reader.

14 Q All right. Did you receive any
09:12 15 postgraduate degrees following Yale?

16 A Yes.

17 Q From where?

18 A Columbia University.

19 Q What degree did you receive from
09:12 20 Columbia?

21 A Two degrees.

22 Q All right. What were they?

23 A My master's in 1961, and my Ph.D. in
24 1966.

09:13 25 Q And what discipline was your Ph.D. in?

09:13 1 A American history.
2 Q What was your dissertation topic?
3 A The Old Progressives and The New Deal.
4 Q In terms of your study for your
09:13 5 dissertation topic, how many years did you spend
6 researching The Old Progressives and The New Deal
7 before you actually completed your paper?
8 A I think three years would be a good
9 guess.
09:13 10 Q What sources did you go to in terms of
11 compiling the information that formed the basis
12 for your dissertation?
13 A As is accepted practice, I went to
14 secondary sources, and then as quickly as
09:14 15 possible, went to primary sources.
16 Q Would you describe the difference
17 between a secondary source and a primary source in
18 terms of the research of history?
19 A A secondary source would be a history
09:14 20 written by someone who was not there.
21 Q All right.
22 A A scholar or someone, an attempt to
23 get an interpretation and a narrative.
24 Q Okay.
09:14 25 A A primary source would be an account

1 by someone who was probably there or close by,
2 almost an eyewitness or contemporary document.

3 Q In terms of looking at secondary
4 sources, do you take into account the theoretical
5 or philosophical event of the writer before you
6 utilize that particular source?

7 A If you mean by utilize, before you
8 even pick it up, no, but in the course of
9 absorbing it and making use of it, yes of course.

10 Q Are you familiar with different types,
11 of historians, some that are referred to, for
12 instance, as revisionists of history or some that
13 are called postrevisionist historians?

14 A Yes.

15 Q Do you fall into any of those
16 categories?

17 A I think I -- I don't think I've been
18 called either one of those terms.

19 Q All right. There are terms that are
20 applied to certain historians that may look back
21 at history with a particular philosophy or
22 particular event, other than the revisionist and
23 postrevisionist or their other labels?

24 A If I understand the question, there
25 are Marxist historians.

09:15 1 Q Okay.

2 A There are -- the term "radical

3 historians" is sometimes heard.

4 Q Okay.

09:15 5 A Then there are feminist historians, if

6 this is what you're asking.

7 Q Okay. And when we discuss those

8 different types of historians, would you agree

9 that the reason they are given these labels is at

09:16 10 least some people feel that when they look back at

11 history and write it today, they don't do so in an

12 objective manner, they do so with a particular

13 intent in mind to shade history to meet their

14 philosophy?

09:16 15 A That was a long question. There's --

16 that that is an assumption some people make. Was

17 that --

18 Q Yes.

19 A I think the terms that you mentioned

09:16 20 are used by whoever uses them to indicate a --

21 that a person has a somewhat -- possibly has a

22 predisposition to look at things from a certain

23 angle --

24 Q Okay.

09:16 25 A -- that perhaps make the person's work

9:16 1 stand out or --

2 Q Is that also done from time to time to
3 influence public opinion? In other words, if you
4 wanted the public to believe a certain thing about
9:17 5 an event in the past, if you can shade it with the
6 correct -- or with your own personal philosophy,
7 maybe you can influence public opinion with regard
8 to that particular event.

9 Will you agree that that could be one
9:1710 of the intents of the writer?

11 A I'm sorry. That's very complicated.
12 Could you do that again?

13 Q Let me ask you an example. For
14 example, Oliver Stone. You're familiar with
9:1715 Oliver Stone, aren't you?

16 A Yes.

17 Q Oliver Stone has a way of looking back
18 at history and seeing a conspiracy almost of any
19 public event that's taken place over the last 50
9:1720 years. Will you agree with that?

21 A Well, I'll agree that Oliver Stone has
22 a special Oliver Stoneish way of looking at
23 history.

24 Q Will you agree that the fact that he
9:1725 is able to portray certain events in the past in

17 1 conspiratorial terms maybe influences the American
2 public to believe that maybe a conspiracy really
3 did exist?

4 A That's a very interesting --
09:18 5 historians talk about that amongst themselves, and
6 we are -- we wonder how much influence he has.
7 I'm not sure of the answer to that.

8 Q Let me ask you in reference to that,
9 and we'll keep along the same lines talking about
09:18 10 Stone. Stone published most of his works in
11 motion pictures. Would you say that the films
12 that he produces are seen more widely or viewed
13 more widely by the general public than, say, a
14 book that might be written?

09:18 15 A He has an enormous audience and few
16 books have an enormous audience like that.

17 Q Okay. Let me shift gears a little bit
18 with you, Doctor, and I want to ask you a little
19 bit about your prior testimony.

09:19 20 Have you ever prior to today given
21 testimony in any type of lawsuit involving the
22 cigarette industry?

23 A Yes.

24 Q When?

09:19 25 A It was 19 -- I believe 1991.

09:19 1 Q And who retained you to offer
2 testimony in 1991?

3 A Lawyers for The American Tobacco
4 Company primarily, as I recall.

09:19 5 Q And what was the nature of that
6 litigation in 1991?

7 A The nature of the litigation?

8 Q Yes.

9 A It was the Kotler case.

09:19 10 Q All right. And what opinions were you
11 asked to provide or what type of research were you
12 asked to provide for that litigation?

13 A I haven't looked back at that in a
14 while, but I was asked to conduct research, and
09:19 15 then in testimony to testify about the history of
16 tobacco, in particular the rise of the cigarette
17 and its social reputation.

18 Q Okay. Back in 1991 when you gave that
19 testimony, did you give it in a deposition format
09:20 20 like you're giving here today?

21 A No.

22 Q Did you testify live at trial?

23 A Yes.

24 Q Did you ever give a deposition prior
09:20 25 to your testimony at trial?

20 1 A At that trial?
2 Q Yes, sir.
3 A I was not deposed as I recall.
4 Q Do you recall how long you were on the
09:20 5 witness stand?
6 A I think it was three days and over a
7 weekend, but not the whole day necessarily, but
8 involved, as I recall it.
9 Q Prior to 1991 in the Kotler case, had
09:2010 you ever given testimony in a deposition or trial
11 before?
12 A No.
13 Q Since 1991, have you given any
14 depositions prior to today?
09:2115 A Yes.
16 Q When?
17 A Earlier this year, I believe,
18 February.
19 Q And who were you testifying on behalf
09:2120 of in February?
21 A I was retained by lawyers from Latham
22 & Watkins, and the firm was Liggett, I believe.
23 Q Okay. As far as that testimony is
24 concerned, how long were you deposed that day? Do
09:2125 you recall?

9:21 1 A I think we started about the 9:00
2 o'clock, and I think we went to 2:30 or 3:00
3 o'clock.

4 Q Did you render a report for that
9:21 5 testimony back in February?

6 A Did I render a report?

7 Q Yes, sir.

8 A No. I just was deposed.

9 Q All right. And was it relative to a
09:2210 particular case arising from one of the states?

11 A Yes.

12 Q Which state?

13 A Oh, no. Not one -- not one of the
14 states.

09:2215 Q Okay.

16 A From a particular case.

17 Q All right. What case was that?

18 A Janice Sackman.

19 Q And the Sackman case, was that a case
09:2220 of an individual smoker that had brought suit
21 against the tobacco industries?

22 A Yes.

23 Q And once again, what was the area of
24 testimony that you gave?

09:2225 A Pretty much the same as I said before.

09:22 1 Q Dr. Graham, I've been provided a
2 preliminary report that has at the top Otis L.
3 Graham, Ph.D., and it goes through a little bit of
4 your personal history, and it talks about what
09:22 5 you're expected to testify about.

6 Have you seen a copy of this?

7 A Yes.

8 Q And is -- is this particular report
9 that I've been provided a report that you
09:2310 personally prepared?

11 A Yes.

12 Q Did you actually type this report
13 yourself or have someone do it?

14 A No. I didn't type it.

09:2315 Q Who typed it?

16 A It was typed in the lawyer's office.

17 Q And how was the report prepared?

18 A When it came time to do the report?

19 Q Yes, sir.

09:2320 A We talked on the phone, and we
21 talked -- I -- I summarized my -- what I had done,
22 what I was prepared to speak to.

23 Q Okay.

24 A And they -- we had a little discussion
09:2325 about this and that, and then they did a draft.

9:23 1 Q All right.

2 A Called me back later, as I remember,
3 read the draft. I -- as I always do with drafts,
4 I fixed -- I changed parts.

9:23 5 Q All right.

6 A Not that. Do that. And then I --
7 then they typed -- we may have done that twice.

8 Q Okay. So the initial draft was
9 actually prepared by the lawyers?

9:2410 A The initial draft was my verbal.

11 Q Okay. But when we talk about draft in
12 terms of the written word actually being on paper
13 or on screen --

14 A Yes.

9:2415 Q -- that was actually first prepared by
16 the lawyers?

17 A Yes.

18 Q And then you said, you know, these are
19 some changes that I feel need to be made. They
9:2420 made those changes and, ultimately, this draft was
21 arrived at; is that correct?

22 A Yes.

23 Q Okay. Have you ever been confused
24 with Otis Graham who is a professor of
9:2425 African-American studies at Fordham University?

09:24 1 A I never knew there was one.
2 Q Okay.
3 A Spelled the same way?
4 Q Spelled the same way with that same
09:24 5 middle initial. Are you familiar with that Otis
6 L. Graham?
7 A No.
8 Q As far as your father is concerned,
9 what did he do for a living?
09:24 10 A He was a Presbyterian minister.
11 Q Okay. Do you have any relatives that
12 are active in the field of history other than
13 yourself?
14 A (Witness nods.)
09:25 15 Q Who?
16 A The principal relative that's active
17 in the field of history is my brother Hugh.
18 Q Where does he work?
19 A He's a chaired professor at Vanderbilt
09:25 20 University.
21 Q If someone was to look back at your
22 career prior to 1991 and try to put in synopsis
23 terms the significant historical research that
24 Otis L. Graham, Jr. had done, what would they
09:25 25 focus on?

9:25 1 A Prior to 1991 I had four books and
2 many articles, so they might have said different
3 things, but I would think the answer to that would
4 be, he has been interested in reform movements,
9:25 5 reform ideas, reform impulses and attempted to
6 change America in the direction it's going to
7 something else.

8 Q All right. In terms of the four books
9 that you've written prior to 1991, can you tell me
9:2610 the names of those books?

11 A 1991, it would be three, plus I'm
12 speaking of what we call real books.

13 Q Okay.

14 A I have 10 or 11 anthologies that I had
9:2615 published by that time, but I was speaking of the
16 books that I alone had my name on and I did the
17 entire book, and I -- now I would like to correct
18 what I said. My fourth book was published in
19 1992, so I had three books at that time.

9:2620 Q Can you tell me the names of those
21 three books, chronologically if you can, with the
22 first that you wrote to the last, and the title.

23 A The first was -- arose out of the
24 dissertation and was called An Encore For Reform.

9:2625 Q What was that book about?

09:26 1 A That book was about the progressive
2 movement, progressive reformers and how they
3 responded to those who lived long enough to the
4 second reform movement of the Twentieth Century in
09:27 5 the '30s.

6 Q What were they attempting to reform?

7 A Everything in sight. That's a little
8 broad. It was in a -- the progressive movement
9 was an enormously broad-ranging set of impulses,
09:2710 not entirely consistent with each other, but they
11 attacked and wanted to change aspects of American
12 life from child labor to the role of women.

13 Q Who would you consider the reformed
14 leaders to be during that time period?

09:2715 A There were so many. It was a
16 nationwide reform. There was not a state or city
17 that wasn't touched by it, then national politics
18 was touched for -- for an entire generation, three
19 presidents. So there's so many --

09:2720 Q Who would be a national figure that we
21 would recognize as a reformer?

22 A Anyone would recognize, I hope, the
23 two reform presidents, Woodrow Wilson and Teddy
24 Roosevelt.

09:2825 Q Okay.

09:28 1 A Then there were other national leaders
2 quite well-known. William Jennings Bryan ran for
3 president four times and was a very known
4 American. His name comes to mind. Robert
09:28 5 LaFollette, a very well-known senator from
6 Wisconsin. Then there were journalists, and there
7 were --

8 Q Did you ever do any writing on Bryan
9 and the Scopes monkey trial?

09:28 10 A I may have touched briefly on it in my
11 book on the '20s. Brennan?

12 Q Yes, William Jennings Bryan.

13 A Bryan. Oh, yes. I did in fact. I in
14 fact -- I had something to say. I have written --
09:28 15 I don't know how long it is -- about the Scopes
16 trial in the '20s.

17 Q Okay. Let's talk a little bit about
18 your second book.

19 A That was --

09:28 20 Q What's the title of it?

21 A The title was The Great Campaigns.

22 Q And what was it about?

23 A The subtitle was Reform and War in
24 America 1900 to 1928.

09:29 25 Q Given that time period, I assume you

29 1 discussed not only World War I, but did you
2 discuss the Mexican-American war or any other
3 conflicts that occurred during that time -- the
4 Spanish-American, I guess I should say.

09:29 5 A The book is a -- opens up when the
6 Spanish-American war is over, but I think it
7 connects to it. But it's mostly about the
8 progressive movement, what happened to it, as
9 American politics and American public issues moved
09:2910 in '20s as the '20s moved.

11 Q All right. And then the third book
12 that you wrote, what was it?

13 A That was a book called Toward a
14 Planned Society. It was a book about the idea of
09:2915 national planning in modern American life.

16 Q Planning about what?

17 A The idea of planning is a big large
18 idea and it touches a lot of things, but it was
19 primarily a study of how the planning impulse from
09:2920 American cities, to some extent, business and
21 regions became a national planning impulse.

22 Q All right. I'm still a little vague
23 on what we're talking about. When we're talking
24 about national planning, are we talking about the
09:3025 way the cities are going to develop in terms of

09:30 1 their economic basis or where people are going to
2 live? Is it a book about white flight from the
3 inner cities? What -- what exactly is the book
4 about? I'm having a hard time getting a grip on
09:30 5 this.

6 A I shared that when I -- as I worked
7 through the book --

8 Q All right.

9 A -- and it's a -- it's understandable
09:3010 feeling about a somewhat vague idea and
11 complicated idea. I think the briefest answer
12 would be there emerged in the '30s, under Franklin
13 Roosevelt, with roots earlier, and Roosevelt was a
14 great expounder of this, frankly. The idea that
09:3115 instead of the government taking individual issues
16 one by one, there ought to be a more long-range
17 prospective, a long-range idea of what America
18 should be and the government should have goals.

19 Q Okay.

09:3120 A This is an interesting idea, I found,
21 and I tried to pull it all together.

22 Q Is that a -- is that a concept that
23 you embrace, that the government should have
24 goals?

09:3125 A I -- I wrote the book because I was

09:31 1 interested in the idea.

2 Q Uh-huh.

3 A And of two or three minds about it,
4 and when I finished, it was just a narrative of
09:31 5 the idea, and I didn't vote one way or the other
6 really, but you could read the book and be the
7 judge.

8 Q Do you feel that throughout periods of
9 history, and let's take specifically the Twentieth
09:31 10 Century if we can, that the government has indeed
11 had goals for certain projects that have improved
12 society here in the United States? For instance,
13 the space program.

14 A All governments have goals. I -- the
09:32 15 idea of planning was that we would have long-term
16 goals and take them more seriously and knit
17 together little goals into larger goals, if that
18 makes sense.

19 Q Once again my question is: Do you
09:32 20 believe that government during the Twentieth
21 Century has embraced certain goals that have
22 produced beneficial effects to American society?
23 And I mentioned the space program as a particular
24 example.

09:32 25 A As I understand the question, I would

9:32 1 agree that that has been sometimes the case, and
2 the space program is a case of a goal achieved.

3 Q Right. And many resulting by-products
4 that have been beneficial to society, both from
9:33 5 the standpoint of science and technology, and I
6 guess aesthetically from the better understanding
7 of our universe.

8 Will you agree with that?

9 A There are many examples of that.

9:3310 Q Do you feel that government as one of
11 its goals should embrace programs that benefit the
12 health and safety of Americans?

13 A As a citizen, as a person you're
14 asking?

9:3315 Q Yes, sir.

16 A Yes. That's -- that's -- that's one
17 of the main things government is there for.

18 Q All right. And that if there are
19 things that exist in American society that are
9:3320 harmful to the health and well-being of Americans,
21 that government has the right to -- to take a hard
22 look at it and regulate it within reason.

23 Will you agree with that?

24 A Certainly to take a hard look at it,
9:3425 and sometimes regulation is indicated. And

:34 1 certainly "within reason" is a good phrase.

2 Q A good example would be, for example,
3 illicit drugs, things like cocaine, heroine, PCP,
4 whatever, marijuana. Will you agree that those
09:34 5 are substances that can be abused and can be
6 harmful to the American public, and especially not
7 well-understood among teens?

8 Would you agree with that?

9 A I would agree with that.

09:34 10 Q And that government has a role in
11 regulating those particular substances in order to
12 protect teens from doing things to themselves that
13 they might not know any better about?

14 A Would you mind the list of substances
09:34 15 again just so I --

16 Q Yeah. Heroin, cocaine, PCP,
17 marijuana.

18 A Yes. I'm not sure personally about
19 marijuana, but I think yes. I'd say yes.

09:34 20 Q And I -- I should have asked you this
21 earlier and I didn't ask you. Are you a smoker?

22 A No.

23 Q Have you ever in the past smoked
24 cigarettes?

0:35 25 A No.

9:35 1 Q Never have your whole life?
2 A No. Polly Anne Trabue tried to
3 convince me to do it, but I didn't.
4 Q All right. Fair enough.
9:35 5 Have you smoked cigars?
6 A Yes.
7 Q Do you still smoke cigars?
8 A No.
9 Q When did you stop?
9:35 10 A When I married Dolores.
11 Q All right. Why did you stop?
12 A Dolores would prefer no smoke.
13 Q Okay. Have you ever smoked a pipe?
14 A Yes.
9:35 15 Q Do you still smoke pipes?
16 A No.
17 Q When did you stop smoking pipes?
18 A I think sort of in the Marines.
19 It's -- early.
9:35 20 Q Years ago?
21 A Years ago.
22 Q Okay. We've gone through, I believe,
23 the three books that you wrote prior to 1991. Is
24 it fair to say that prior to 1991, you had
9:35 25 undertaken no significant research into the issue

09:36 1 of the cigarette industry and its impact upon
2 America?

3 A No.

4 Q You had taken significant --

09:36 5 A Yes.

6 Q You had done some significant research
7 prior to 1991?

8 A Yes.

9 Q When did you first do research with
09:36 10 regard to the cigarette industry and its impact
11 upon America?

12 A I began, I believe, in 19 -- about
13 1988.

14 Q And at whose behest did you begin in
09:36 15 1988?

16 A At the behest of two lawyers.

17 Q And who were those lawyers?

18 A Jan Johnson and Allen Purvis.

19 Q And they're seated here today --

09:36 20 A Yes.

21 Q -- Mr. Purvis and Ms. Johnson? Who
22 did they work for at that time in 1988, if you
23 recall?

24 A Jan Johnson worked for Arnold &
09:36 25 Porter.

1 Q Okay.

2 A And Purvis worked for Shook, Hardy &
3 Bacon.

4 Q Where did you first meet Mr. Purvis
09:36 5 and Ms. Johnson?

6 A In my office in the history department
7 at the University of North Carolina, Chapel Hill.

8 Q Now, that's where you're a visiting
9 professor currently, correct?

09:3710 A No.

11 Q Where are you a visiting professor
12 currently?

13 A University of North Carolina,
14 Wilmington.

15 Q Okay. I apologize.

16 A There are 16 campuses.

17 Q I understand. How many times -- or
18 how long did you work at Chapel Hill?

19 A Nine years.

09:3720 Q From what year to what year?

21 A 1980 to 1989.

22 Q During the period of time that you
23 worked at Chapel Hill, was any of your fund -- any
24 of your research or study funded by any grants or
09:3725 scholarships or anything else from the tobacco

09:37 1 industry?

2 A In the last year I was there, I began
3 to do some research, and I submitted my bills to
4 lawyers.

09:37 5 Q To Mr. Purvis and Ms. Johnson?

6 A As I recall -- I don't recall which
7 one.

8 Q Okay. Let's go back to 1988. Do you
9 have any idea how -- who contacted who first? Did
09:38 10 they contact you or you contact them?

11 A They contacted me.

12 Q Do you know how they found out about
13 you?

14 A I think they told me that my name had
09:38 15 come up among informed historians. I --

16 Q Okay. Do we know who might have
17 suggested your name to them?

18 A They may have told me in order to
19 indicate that they had talked to historians and
09:38 20 knew historians, but I can't remember if they told
21 me exactly who had recommended me.

22 Q Okay. Let's go back to my previous
23 question. Prior to 1988 and being contacted by
24 Mr. Purvis and Ms. Johnson, had you ever done any
09:38 25 significant research on the cigarette industry in

09:38 1 America?

2 A No.

3 Q Prior to 1988, did you have any

4 opinions regarding the extent to which the

09:38 5 cigarette industry had influenced American public

6 opinion?

7 A I don't remember having professional

8 opinions.

9 Q Okay. In 1988 when they contacted

09:39 10 you, where did the initial conversation take place

11 between you and the lawyers?

12 A It came -- it took place on the

13 telephone.

14 Q Then did you meet?

09:39 15 A Yes.

16 Q Where?

17 A In my office.

18 Q Do you recall what time frame in 1988

19 you first met?

09:39 20 A I seem to remember patches of snow, so

21 it must have been February.

22 Q Okay. And what did you-all discuss in

23 that first conversation with each other?

24 A It was almost a decade ago, but why

09:39 25 they -- what -- what -- why they came to see me.

3:39 1 Q Okay.

2 A What were their interests in history.

3 Q All right.

4 A What they -- what they imagined that I

09:40 5 might do for them --

6 Q All right.

7 A -- in the way of research and --

8 Q What type of research did they suggest
9 to you?

09:40 10 A As I recall, they suggested that I
11 begin research on the history of tobacco in the
12 United States with particular emphasis on the rise
13 of the cigarette and the role of the cigarette,
14 and a cigarette as an item in American life, and
09:40 15 push on in the area to determine whether I enjoyed
16 the research. It was somewhat unfocused, an
17 invitation to read --

18 Q Okay.

19 A -- and to turn my mind, some of my
09:40 20 hours in this direction.

21 Q As far as the research that you did
22 during your last year at Chapel Hill, you
23 mentioned that some of that was funded, or at
24 least the bills were sent to the lawyers. What
09:41 25 particular research was being done during your

9:41 1 last year that lawyers paid for?

2 A I don't have a diary of exactly what I
3 did in the last year, but I passed quickly from
4 secondary sources into primary sources to get a
9:41 5 feel for the public, what was being -- what was
6 being done in the media.

7 Q Those primary sources are actually the
8 folks that might have been close to the events,
9 correct?

9:4110 A They are written by journalists close,
11 to the events about people who are in the events.

12 Q Who are some of the primary sources
13 that you went to back in 1989?

14 A I remember going to the New York
9:4115 Times, which is a -- not only a fine newspaper,
16 but easier to use than many newspapers because it
17 is indexed among other things. You can go to it
18 and use it for readily -- I know that I went to
19 that. And then there are national magazines then
9:4220 as there are now all the way through the Twentieth
21 Century. I started to go to them.

22 Q When you talk about going to them, you
23 went to the actual source itself, the written
24 source and reviewed old Time magazines, old
25 New York Times, correct?

3:42 1 A Yes.

2 Q All right. Did you ever have any
3 meetings with any editors or actual writers at the
4 New York Times or Time magazine regarding the
09:42 5 articles that had been written?

6 A No.

7 Q Okay. As far as the source material
8 that began to compile, did you store it in any
9 particular place?

09:4210 A I stored it in my house.

11 Q Did you provide a copy to the lawyers
12 of the material that you were obtaining?

13 A I don't think so.

14 Q In this litigation that we're here
09:4215 about today, the State of Texas has brought suit
16 against the cigarette industry over Medicaid
17 claims. Are you familiar with that?

18 A Yes.

19 Q All right. Have you had an occasion
09:4320 to review any of the pleadings in this case? By
21 "pleadings," I mean the Plaintiff's complaint
22 that was filed or the answer that was filed by the
23 tobacco companies.

24 A I -- I briefly saw -- I don't know the
09:4325 legal language for the document you're

09:43 1 mentioning. I have seen that somewhat quickly.

2 Q Okay. Have you seen a copy of the
3 deposition notice that was served upon your
4 lawyers and should have been given to you
09:43 5 regarding this particular litigation?

6 A I haven't -- I don't think I've seen
7 that.

8 Q All right. Let me show you a copy of
9 it and see if this rings a bell at all.

09:4310 Have you seen that, Dr. Graham?

11 A I have not seen this.

12 Q All right. Have you seen the subpoena
13 duces tecum that was attached to it that asks you
14 to bring certain documents with you?

09:4415 A I have not seen it --

16 Q All right.

17 A -- I don't think.

18 Q You haven't seen the subpoena duces
19 tecum? Let me go through it with you and just ask
09:4420 you, you and I here together whether or not you
21 have provided any of these things to us here
22 today?

23 MR. STOEVEER: Jim, just let me
24 state for the record that with respect to the
09:4425 subpoena duces tecum, we have already registered

our objections to the service of that subpoena with Grant Kaiser. The subpoena was served late. It is overly broad. It's vague and ambiguous, and it goes well beyond what's called for in the --

MR. MORRIS: But Dr. Graham and I are having a good time dealing with overly broad, vague and ambiguous.

MR. STOEVEER: I understand, and I would like to make my objection to the record.

In addition, we have produced over four boxes to you that Dr. Graham has relied upon.

MR. MORRIS: Okay.

MR. STOEVEER: I will also mention the subpoena duces tecum on the subject of continuing conversation between Grant Kaiser and myself, and we expect that they probably will be withdrawn.

MR. MORRIS: All right. Fair enough.

Q (By Mr. Morris) That will save us a little time, Doctor. I won't have to go through all these with you.

Let me ask you a question about something Mr. Stoeveer did mention. He mentioned

09:45 1 the over four boxes of documents that were
2 furnished to my office last week. Did you have an
3 occasion to review the documents that were
4 furnished to me?

09:45 5 A Yes.

6 Q Have you reviewed all those documents?

7 A Yes.

8 Q At one time or another, have you read
9 all of those documents?

09:4510 A Yes.

11 Q Many of those documents reference --
12 well, let me back up and ask you this way. Many
13 of those documents have Bates stamps on them,
14 Bates stamps. Are you familiar with Bates stamps?

09:4515 A No.

16 Q All right. A Bates stamp is a number
17 that someone puts on a document so that we can
18 track the document and we can tell somebody down
19 the road, this is document 400,000, or this is
09:4520 document 400,001, that way we can track
21 documents.

22 I am sure that in your past you have
23 reviewed documents that have Bates stamps on them;
24 have you not?

09:4525 A I guess I have. I don't know the

09:45 1 term.

2 Q Okay. Well, Bates is the name of the
3 company that makes the stamp. All right? And
4 that's the reason that I use it. I suppose there
09:46 5 are other people that make stamps also other than
6 Bates Manufacturing Company. I'm just not
7 familiar with them.

8 Many of the documents that I received
9 are Bates stamped, do have a number on them, and
09:46 10 there are many that don't. Do you know why
11 certain documents would not have a stamped number
12 on them?

13 A No, but I -- no, I don't know why, but
14 I have --

09:46 15 Q Okay. Is your answer no?

16 A I don't know why some might and some
17 might not.

18 MR. PURVIS: Jim, I can perhaps
19 clear this up. In the interest of time that some
09:46 20 documents only had the first page Bates stamped in
21 a series of documents. In other words, we
22 considered them to be a single document, and
23 that's why the succeeding pages may not have
24 numbers on them, but they -- if you have a first
09:47 25 page that has a number on it, it's my

09:47 1 understanding you can assume that the following
2 pages without numbers belong as a single document
3 to that first one --

4 MR. MORRIS: Okay.

09:47 5 MR. PURVIS: -- and then the next
6 Bates stamp that was done.

7 MS. TYLER: And that was done in
8 the interest of getting you the documents in that
9 timely fashion.

09:47 10 MR. MORRIS: That's fine. Thank
11 you.

12 Q (By Mr. Morris) Well, yeah, let me
13 ask you that. Do you know when those stamps were
14 initially put on the documents, Dr. Graham?

09:47 15 A My documents were stamped when I was
16 involved in the ABC case. They were shipped to
17 the lawyers. They sat in Richmond, Virginia for
18 two weeks, my documents.

19 Q Okay.

09:47 20 A And when they came back, they had
21 these stamps on them.

22 Q All right. Now, when was that
23 timewise?

24 A That would have been the summer of
09:48 25 '90 -- the ABC case -- '4 or '5. I'm sorry that

48 1 I --

2 Q That's okay.

3 A It was the summer of '94 or '5.

4 Q As of that time, had you reviewed the
09:48 5 Time magazine articles?

6 A Oh, yes.

7 Q Had you reviewed the Life magazine
8 articles?

9 A Yes.

09:48 10 Q Had you reviewed the Newsweek
11 articles?

12 A Yes.

13 Q Had you reviewed the Reader's Digest
14 articles?

09:48 15 A Yes.

16 Q US News & World Report articles?

17 A Yes.

18 Q What about the Texas reports?

19 A At that time?

09:48 20 Q Yes.

21 A Of the ABC case, the stamping?

22 Q Yes.

23 A The Texas reports?

24 Q Yes. Or the Texas report. It would

09:48 25 be Bates Number 402162 through 402178.

09:48 1 A Let me think. I'm not 100 percent
2 sure. I had reviewed several state reports, but
3 I'm not sure about Texas.

4 Q Did you gather the Texas state reports
09:49 5 yourself?

6 A No.

7 Q Who gathered those?

8 A Professor Richard Means.

9 Q Professor Richard Means. And where is
09:4910 he a professor?

11 A He is an emeritus professor at Auburn
12 University.

13 Q When did he gather the Texas documents
14 to the best of your knowledge?

09:4915 A I'm not sure, but it was within the
16 last -- I don't know really. There -- the
17 historical documents, you can't tell. I'm not
18 sure.

19 Q When did you first see them?

09:4920 A The Texas?

21 Q The Texas documents.

22 A Probably this year, probably April
23 on --

24 Q All right. April of 1997?

09:4925 A Probably. I may have seen them

49 1 before. I've long had an interest in Means' work.

2 Q What work has Means done that you have
3 an interest in?

4 A Means is a -- he focuses on -- he's a
09:50 5 specialist in health education, the history of
6 health education.

7 Q Has he been retained in the past by
8 attorneys for the cigarette companies?

9 A I don't personally know.

09:50 10 Q Have you ever asked him that question?

11 A No.

12 Q Have you ever talked to him
13 personally?

14 A Yes.

09:50 15 Q Have you ever talked to him personally
16 about your testimony on behalf of the cigarette
17 companies?

18 A No.

19 Q How is it that he provided his
09:50 20 information on Texas to you? Did he mail it to
21 you?

22 A He mailed it.

23 Q Did you call him?

24 A I called him.

09:50 25 Q All right. And what did you ask him?

1:50 1 A As I recall, I asked him if in his
2 research he had done a Texas study. And the
3 answer was yes. And I said, I would like to see
4 that.

0:51 5 Q All right. And so he just mailed it
6 to you?

7 A Yes.

8 Q Who paid for the cost of that mailing?

9 A I don't know. I didn't.

9:5110 Q Did you submit a bill to the cigarette
11 companies saying that this assisted you in your
12 research and that, therefore, you should be
13 reimbursed?

14 A For what?

9:5115 Q For the cost of the copies?

16 A I don't remember exactly, but I don't
17 think I was charged.

18 Q So Professor Means just gratuitously
19 sent you a box of what may be, you know, two or
9:5120 three boxes of documents?

21 A He sent me two or three -- he sent me
22 one big box.

23 Q Did the cigarette company lawyers have
24 anything to do with you getting those documents
9:5125 from Professor Means?

51 1 A I have no firm knowledge, but I think
2 it is safe to say that he has done some work for
3 them. I have no personal hard knowledge.

4 Q Have you ever reviewed any depositions
09:52 5 Professor Means has given?

6 A Never.

7 Q Have you ever reviewed any trial
8 testimony that he may have given?

9 A Never.

09:5210 Q Have you ever worked in the State of,
11 Texas?

12 A Worked?

13 Q Yeah.

14 A I don't think so.

09:5215 Q All right. Ever been employed in the
16 State of Texas?

17 A No.

18 Q Have you ever had a residence in the
19 State of Texas?

09:5220 A No.

21 Q Have you ever attended a university or
22 college in the State of Texas?

23 A No.

24 Q Do you have any relatives that live in
09:5225 the State of Texas?

9:52 1 A Yes. I had some that have died.

2 Q All right. Have you ever been to the
3 State of Texas?

4 A Oh, many times.

9:53 5 Q Have you ever been to the State of
6 Texas for the purpose of reviewing historical
7 information?

8 A Yes.

9 Q When were you last in the State of
9:5310 Texas for that purpose?

11 A June.

12 Q June of this year?

13 A Yes.

14 Q What were you there to review?

9:5315 A I was there to visit archives, to
16 review Texas newspapers, files, to research.

17 Q On what?

18 A On, you know, Texas materials on the
19 question of smoking and health.

9:5320 Q Who paid for the trip?

21 A I submitted a bill to the lawyers.

22 Q Lawyers for the cigarette industry?

23 A Yes.

24 Q How long were you in Texas in June of
9:5325 1997 doing this research?

09:53 1 A In June -- on the June trip?
2 Q Yes, sir.
3 A Two and a half days.
4 Q Where were you in Texas?
09:54 5 A Austin.
6 Q At which research facility did you do
7 your study?
8 A Most of it in the Center of American
9 History at the university library. I went across
09:5410 to the LBJ briefly, and I used the undergraduate,
11 library a bit.
12 Q Did you obtain any documents during
13 the trip in June of '97 that were part of the
14 disclosure that was given to me, four and a half
09:5415 boxes or so?
16 A I can't recall what I brought back.
17 Q Did you bring anything back?
18 A Yes. I brought -- I brought back a
19 small amount. Mostly my trip was to familiarize
09:5520 myself with archives there and to get a personal
21 feel for what was there and to -- and to read in
22 the microfilm itself some of the newspapers I had
23 received in Xerox form.
24 Q How many documents would you say that
09:5525 you brought back with you, Dr. Graham?

09:55 1 A Personally on that -- from that trip?

2 Q Yes, sir.

3 A Oh, I can't say. Fifty or 100.

4 Q Okay. Maybe a stack maybe half an

09:55 5 inch thick?

6 A No.

7 Q An inch thick?

8 A I can't recall. The purpose of the

9 trip was not to wag back a lot of documents

09:55 10 because I had the documents -- many documents

11 already.

12 Q What was the purpose of the trip if

13 you could say what the purpose of the trip was?

14 A See some things for myself that I had

09:55 15 greater curiosity about. I wanted to check and be

16 sure that the newspaper clippings that I had

17 received from my researcher were, in fact, exactly

18 where my researcher said he found them.

19 Q Who is your researcher?

09:56 20 A In Texas, principally Mark Barringer.

21 Q And where does Mark Barringer work?

22 A He works at Texas Christian

23 University.

24 Q TCU in Fort Worth?

09:56 25 A Yes.

3:56 1 Q All right. And what is his expertise?
2 A He has a Ph.D. in history.
3 Q Has he done work also on the history
4 of cigarette -- the cigarette industry in Texas?
09:56 5 A Yes.
6 Q Has he been paid by the cigarette
7 company lawyers for the work that he's done?
8 A I assume so.
9 Q How long has Mark Barringer been
09:57 10 working with you on this project?
11 A About four months.
12 Q When was he first hired? Do you know?
13 A No.
14 Q Who hired him?
09:57 15 A My information that he had begun work
16 on this subject. He's a historian of Texas in the
17 southwest.
18 Q Right.
19 A But intense work on this subject, it's
09:57 20 my understanding that he began in connection with
21 some work with Professor Ben Procter.
22 Q Is Professor Ben Procter also working
23 on the cigarette industry and its influence in the
24 State of Texas?
09:57 25 A I don't know for sure.

09:57 1 Q Where does Professor Ben Procter work?

2 A I believe he is at TCU.

3 Q Is he a Ph.D.?

4 A Oh, yes.

09:58 5 Q What leads you to believe that
6 Barringer would have been hired by Procter?

7 A When I became interested in doing
8 research in Texas I learned that Barringer and
9 Procter had commenced some work and that Barringer
09:5810 was knowledgeable, and that I -- if I wanted
11 someone who had a head start and who had good
12 credentials, that Barringer was possibly
13 available. I didn't have a --

14 Q Who suggested that to you?

09:5815 A Who suggested that to me?

16 Q Yes.

17 A I can't recall exactly.

18 Q Was it one of the tobacco company
19 lawyers?

09:5820 A Could have been.

21 Q Okay. What about Ben Procter? Have
22 you ever met him?

23 A No.

24 Q Do you know if his research is being
09:5825 paid for by the cigarette companies also?

58 1 A I don't know.

2 Q Do you know of any other historians in

3 the State of Texas that are curious about this

4 particular issue and are doing research on it

09:59 5 right now at the behest of the cigarette industry?

6 A In the State of Texas?

7 Q Yes.

8 A No one. I don't think I do.

9 Q Prior to June of 1997, had you ever

09:59 10 visited the State of Texas for the purpose of

11 doing cigarette research?

12 A Yes.

13 Q When?

14 A Once before. I think it was April,

09:59 15 late April.

16 Q April of 1997?

17 A Yes. Or it could have been early

18 May. I'll have to look at my calendar.

19 Q Okay. Where did you -- where did you

09:59 20 go on that occasion?

21 A I went to Austin.

22 Q Did you have an occasion during the

23 April trip to meet with either Mark Barringer

24 or -- Mark Barringer?

2:59 25 A Yes.

09:59 1 Q Did he meet you in Austin?
2 A Yes.
3 Q How many days did you remain in Austin
4 on that trip?
09:59 5 A I think that was a two- or three-day
6 trip.
7 Q What did you and Mark do during that
8 two to three days?
9 A Talked.
10:00 10 Q All right.
11 A Got acquainted, got plunged into the
12 subject.
13 Q Did you meet with any cigarette
14 company lawyers?
10:00 15 A Yes.
16 Q Who did you meet with?
17 A There was a brief meeting at the
18 office of Maroney, Jack Maroney. And the rest of
19 his title, I don't recall --
10:00 20 Q Okay.
21 A -- in Austin.
22 Q Did you meet with Mr. Maroney himself?
23 A He was there.
24 Q Were there any other tobacco company
10:00 25 lawyers?

9:00 1 A Yes.

2 Q Who else?

3 A I'm sorry. Two other males, and I

4 could get you their names, but I don't have it in

10:00 5 my memory.

6 Q Any of the folks that are here today,

7 were they there?

8 A Allen Purvis may have been there.

9 MR. PURVIS: Jim, could we take a

10:01 10 break? I've got an emergency call. It's been

11 about an hour.

12 MR. MORRIS: Sure. Sure. Yeah.

13 THE VIDEOGRAPHER: We're off the

14 record. The time is 10:01.

15 (A recess was taken.)

16 THE VIDEOGRAPHER: We're back on

17 the record. The time is 10:13.

18 Q (By Mr. Morris) Doctor, before we

19 took the break, you and I were discussing a

10:13 20 meeting you had in Austin back, I believe, in

21 either late April or early May. You said you had

22 met with Jack Maroney. You recall that Allen

23 Purvis may have been at that meeting.

24 What was discussed back in Austin in

10:14 25 late April?

0:14 1 A At that meeting?

2 Q Yes, sir.

3 A The purpose of that meeting --

4 MR. PURVIS: Steve, I'm going to
0:14 5 object to this as being privileged, and I believe
6 that's an objection we need to make at this time
7 and instruct the witness not to discuss what we,
8 the lawyers, talked to you about at any of the
9 meetings.

0:1410 MR. MORRIS: All right. In as
11 much as he's been retained as a consulting, quote,
12 unquote, expert or testifying expert in the case,
13 what privilege are you asserting over his
14 testimony because, clearly, it can't be
0:1415 lawyer/client. And to the extent that he is not
16 an employee of the tobacco industry, I'm just
17 curious which privilege.

18 MR. PURVIS: Work product.

19 MR. MORRIS: All right. Okay.

10:1520 Well, I assume, then, for now you're instructing
21 him not to answer any questions regarding whatever
22 discussions he had with you-all?

23 MR. PURVIS: That's correct.

24 MR. MORRIS: Okay.

10:1525 Q (By Mr. Morris) Prior to the April

15 1 meeting, had you ever met Mark Barringer before?

2 A No.

3 Q During the two or three days that you
4 spent in Austin back in April of '97, did you and
10:15 5 Mr. Barringer do any independent research at any
6 facility in Austin?

7 A Yes.

8 Q Where?

9 A Basically the three that I mentioned
10:15 10 to you, and he went off for a few hours and may
11 have gone to the Texas State Library.

12 Q What was the focus of your research?

13 A The smoking and health issue in Texas.

14 Q Was it that broad? I mean, were you
10:16 15 looking for any article at all whatsoever that
16 touched on the smoking and health issue in Texas?

17 A In the first place, I was interested
18 in the major newspaper coverage --

19 Q Okay.

10:16 20 A -- which is a big job.

21 Q All right. Now, did you obtain some
22 documents during that April visit, you and
23 Mr. Barringer?

24 A As I remember, Mark handed some
10:16 25 documents over to me that he had already obtained.

10:16 1 Q Okay.

2 A So now since he -- he had a -- some
3 documents that I -- I think I carried back from
4 that.

10:16 5 Q How would you characterize those
6 documents in terms of the size of them? One
7 inches, two inches, eight inches, maybe 12, 14?

8 A Over -- I don't remember exactly at
9 that time, but he shipped me things by mail, but I
10:17 10 don't remember exactly that -- but it was -- on
11 the airplane, it was --

12 Q And have you reviewed all those
13 documents?

14 A Yes.

10:17 15 Q And what were those documents that he
16 provided to you?

17 A They were a wide variety of copies of
18 documents that he had found. I found some too.

19 Q Can you describe them more
10:17 20 specifically?

21 A Since there were so many, I'll give
22 you some examples.

23 Q Fair enough.

24 A The -- there is an archive in the
10:18 25 Center for American History derived from the

9:18 1 Americans for nonsmoking smokers rights, which is
2 rich in materials on Texas on this issue, reports
3 of State legislation discussions -- legislative
4 discussions.

10:18 5 Q All right. Did you furnish those
6 documents to me in the disclosure that you made?

7 A Yes.

8 Q As of 1997 when you were looking
9 through the documents at the Texas archives, did
10:18 10 you come across reported news articles regarding
11 the Brown & Williamson documents?

12 A My reading in the newspapers has not
13 reached the '90s quite yet. I'm -- I'm moving
14 through the '80s.

10:19 15 Q I'm sorry. I misunderstood you. I
16 was under the impression that your research would
17 have gone up to the current date if you were going
18 through the archives there --

19 A Let me be clear.

10:19 20 Q Did you cut off your research?

21 A No. No. Let me be clear. In the
22 newspapers --

23 Q Yes, sir.

24 A -- I am moving toward 1994 or -- if I
10:19 25 have time, and the newspapers that I have read, I

0:19 1 think 1988 is as far as -- I'm not finished. I've
2 got more work to do.

3 Q So in terms of your study of these
4 cigarette industry's influence in Texas, what
0:19 5 would you consider to be your current cutt-off
6 date for the date that the information is good
7 through?

8 A I'm not -- my topic is not the
9 cigarette industry's influence in Texas.

0:2010 Q Oh, it's not?

11 A That was your phrase.

12 Q Okay. What would your phrase be?

13 A My phrase would be the issue, debate,
14 discussion, controversy of smoking and health,
10:2015 what to do about smoking and health.

16 Q All right. Well, let's take your
17 definition, then, and let me ask you when your
18 research cutt-off date is for that particular area
19 of study.

10:2020 A In the newspapers, I'm going to go as
21 far into the '90s as I can. In the other
22 documents that are not newspaper documents, but
23 pamphlets, leaflets, correspondence, little news
24 letters, that sort of thing, these materials often
10:2125 come into the '90s. There's no cutt-off date.

1 Q Okay.

2 A I don't have a cutt-off date.

3 Q We know that the Brown & Williamson
4 documents were published in 1994. Have you had
10:21 5 occasion to review those documents?

6 A The Brown & Williamson documents?

7 Q Yes, sir, that were left with the
8 University of California, San Francisco back in
9 1994.

10:2110 A No.

11 Q Have you reviewed any other cigarette
12 industry documents, internal documents, relative
13 to this issue of health and cigarette smoking?

14 A I may have.

10:2115 Q When do you think you may have?

16 A If they were reported in the newspaper
17 or a national magazine, then I probably saw them.

18 Q Can you cite me any specific examples
19 of industry generated studies that you have
10:2220 reviewed relative to the issues of cigarette
21 smoking and its effect on a person's health?

22 A Industry --

23 Q Uh-huh.

24 A -- generated studies?

10:2225 Q Studies, yes, sir.

0:22 1 A I can't recall any of these files.

2 There's a lot of pamphlets in these files. There
3 could be something.

4 Q All right. Can you specifically refer
0:22 5 to any industry generated studies on the addictive
6 properties of nicotine that may have been
7 published during this time period?

8 A Can I cite you?

9 Q Yes, sir.

10:22 10 A I can't.

11 Q Do you recall seeing any industry
12 generated studies regarding the addictive
13 qualities of nicotine when you were doing your
14 study of the documents either provided to you by
10:23 15 Professor Means or that were obtained by you in
16 your two trips to Texas?

17 A Industry generated studies of
18 addiction, I can't recall any.

19 Q All right. Have you reviewed any
10:23 20 industry generated studies -- and I'm talking
21 about the cigarette industry now.

22 A Yes.

23 Q Just so that we're clear -- any
24 cigarette generated industry studies regarding
10:23 25 cigarettes as a cause of emphysema?

23 1 A I don't think so.

2 Q Have you reviewed any industry
3 generated studies of cigarette smoking as a cause
4 of cancer, lung cancer?

10:23 5 A In the course of my research, I have
6 read -- read and reviewed many articles, the
7 reporting medical research. Sometimes I read an
8 article about medical research, and I don't know
9 if it's industry generated.

10:24 10 Q Well, prior to 1994, did any of the ,
11 medical articles that you read reference a
12 cigarette industry study that had been done that
13 had provided information to the medical community
14 that they relied upon in reaching their
10:24 15 conclusions?

16 A Would you rephrase?

17 Q Yeah. Sure. In the course of your
18 research, did you run across any medical articles
19 that might have been reported in JAMA, or even in
10:24 20 Time magazine or even in Newsweek that referenced
21 a cigarette industry generated medical report as a
22 source of information?

23 A It's quite possible that such a
24 reference was in some of the articles I read,
10:24 25 quite possible.

:24 1 Q Do you remember any specifics --

2 A No.

3 Q -- sitting here today?

4 A No.

:25 5 Q Do you agree with the proposition that
6 manufacturers of products should test their
7 products to determine whether or not there are any
8 potential hazardous circumstances that might be
9 generated by those products in a general sense?

:2510 A I'm a historian. That's outside my
11 expertise. I'm not a lawyer.

12 Q Well, you're here today, though, to
13 testify about the health consequences of tobacco
14 in the State of Texas or the amount of information
0:2515 that was published about those --

16 A Yes.

17 Q -- right? With regard to the issue of
18 health consequences, have you not run across
19 material suggesting that the government from time
0:2520 to time regulates products to determine, you know,
21 whether or not there -- they're injuring the
22 public?

23 A In the discussion as I review it there
24 is, of course, discussion of the government's
0:2625 regulatory roles. It's part of the discussion.

26 1 Q All right. We had discussed that
2 earlier. And did any of your research focus
3 specifically on the role that the government has
4 played in attempting to regulate tobacco in the
10:26 5 State of Texas?

6 A Yes.

7 Q And to what extent has Texas been
8 successful in regulating the use of tobacco in the
9 State of Texas?

10:2610 A To what extent has the State of Texas
11 been successful? I'm not sure that my expertise
12 reaches to that, but I am -- I have become -- I
13 have -- I am aware of some public policy efforts
14 in the State of Texas, and I recently saw some
10:2715 figures that suggest that the rate of smoking in
16 Texas is below the national average. I don't
17 know --

18 Q Where did you see those figures?

19 A I can't recall, but I could produce it
10:2720 for you.

21 Q All right. I'd like to ask you --

22 A At 23 percent.

23 Q All right. Twenty-three percent of
24 Texans smoke?

10:2725 A That's the way I remember the data.

0:27 1 Q Where did you see the data?

2 A I'm sorry. I'd have to go to my files
3 to get that for you. I could do that.

4 Q Who provided the data to you?

0:27 5 A Oh, it was in the materials that I --
6 that I have gathered. I think it was a State
7 government document.

8 Q Was it something that was provided to
9 you by the lawyers?

0:27 10 A No. No. No. No. I got this out of
11 the archives. It's a part of my materials. It's
12 in the boxes somewhere, but --

13 Q All right. And you seem to think that
14 that was a -- a percentage that was generated by a
0:28 15 government study?

16 A I think it was a government figure.

17 Q Prior to April of 1997, had you ever
18 reviewed any articles in the San Antonio Express?

19 A Prior to April of '97?

10:28 20 Q Yes.

21 A No.

22 Q What about the Dallas Morning News,
23 newspaper articles, for the purpose of reviewing
24 the cigarette smoking issue?

10:28 25 A I began my work in late March, so --

28 1 Q All right. Prior to late March of
2 1997, had you ever reviewed any articles in the
3 Dallas Morning News?

4 A No.

10:29 5 Q What about the Texarkana Gazette?

6 A No.

7 Q What about in the Brazos Periodicals?

8 A No.

9 Q Amarillo Daily News?

10:29 10 A No.

11 Q Beaumont Daily Journal?

12 A No.

13 Q Corpus Christi Caller?

14 A For this research?

10:29 15 Q Right.

16 A No.

17 Q The Center for American History, had
18 you reviewed that prior to 1997?

19 A The Center for American History is
10:29 20 a -- is an archive.

21 Q Okay. And they produce documents that
22 summarize whatever -- whatever their research is?

23 A An archive -- the Center for American
24 History is a library.

10:29 25 Q Okay.

10:29 1 A They have research materials.

2 Q All right. Would they put their own
3 name on them?

4 A If you want to make copies, they will
10:30 5 make copies and they put their name on it.

6 Q All right. Prior to March of '97, had
7 you reviewed anything at Baylor University
8 Larriat?

9 A The Baylor University Larriat, is that
10:30 10 a publication?

11 Q Yes, it is.

12 A I did not.

13 Q Have you ever reviewed anything from
14 the Baylor University Larriat?

10:30 15 A I don't recall that I have.

16 Q Okay. During the time that you were
17 at Chapel Hill, were you familiar with the
18 historian named Augustus M. Burns?

19 A I have been in this profession a long
10:31 20 time. I may have. I may have.

21 Q Have you ever done any work with
22 Dr. Burns?

23 A Done any work?

24 Q Yeah. Joint work research?

10:31 25 A Joint work research, no.

3:31 1 Q Okay. Have you ever consulted with
2 him --
3 A Yes.
4 Q -- on any particular issues?
10:31 5 A Yes.
6 Q What issues have you consulted with
7 Dr. Burns about?
8 A We had a phone conversation.
9 Q What about?
10:31 10 A His research on smoking and health.
11 Q When did that phone conversation take
12 place?
13 A I can't recall. I would say this
14 year.
10:31 15 Q Prior to this year, had you had any
16 contact with Dr. Burns regarding the cigarette
17 industry's historical background?
18 A I don't remember for sure whether we
19 talked before.
10:32 20 Q Have you reviewed the deposition that
21 he gave in the State of Florida versus the
22 American Tobacco Company?
23 A No.
24 Q No?
10:32 25 A No. No.

0:32 1 Q Are you familiar with Dr. David
2 Sansing?

3 A I have heard his name. I'm not
4 familiar with him.

0:32 5 Q Have you ever talked to him?

6 A I have not.

7 Q Ever had a phone conversation with
8 him?

9 A I don't think so.

0:3210 Q Have you reviewed his deposition
11 testimony in the State of Mississippi tobacco
12 litigation?

13 A No.

14 Q He's a professor down at the
0:3215 University of Mississippi. Have you ever been
16 down there and visited with him?

17 A I have been through the University of
18 Mississippi. Oxford, isn't it?

19 Q Yes, sir.

0:3220 A I've been through.

21 Q Ever stopped and visited Dr. Sansing?

22 A No. I don't know him.

23 Q What about Dr. John Skates? Do you
24 know him?

10:3225 A No. I don't think so.

32 1 Q Have you ever reviewed any deposition
2 testimony that Dr. Skates may have given?

3 A No.

4 Q What about Dr. Steven Ambrose? Do you
10:32 5 know him?

6 A I know him.

7 Q How do you know Steven Ambrose?

8 A We are colleagues in the profession of
9 history. One knows a lot of colleagues.

10:33 10 Q Sure. Have you and he ever had any
11 conversations regarding the issue of tobacco in
12 the United States?

13 A I don't think so.

14 Q Have you and he consulted together
10:33 15 with regard to this litigation?

16 A No.

17 Q Have you reviewed any deposition
18 testimony he's given in the past?

19 A No.

10:33 20 Q Any trial testimony?

21 A No.

22 Q Are you familiar with Dr. Julian
23 Pleasants?

24 A No.

10:33 25 Q Did you author an article that dealt

10:33 1 with the Immigration Act of 1965?

2 A Yes, probably.

3 Q You were critical of the Immigration
4 Act and its influence of American history?

10:34 5 A Of '65?

6 Q Yes, sir.

7 A Probably you could characterize it
8 that way.

9 Q And if my recollection of the article

10:34 10 serves me, is it fair to summarize your

11 conclusions that the Immigration Act of 1965

12 allowed a greater amount of immigration into the

13 United States than would have occurred otherwise?

14 A No, not exactly.

10:34 15 Q Okay. Can you clarify that for me

16 then?

17 A My -- my position on it, my position

18 on that piece -- this piece of public policy --

19 Q Right.

10:34 20 A -- was that though it greatly, by a

21 factor of four, increased the number of immigrants

22 entering the US and was, therefore, demographic

23 policy of great significance, that it was not

24 discussed. The authors and the sponsors did not

10:35 25 either know or did not tell the American public

10:35 1 the enormous changes that they were making, so
2 that as a piece of public policy, it's a bad
3 example of doing a big thing and not having full
4 discussion of the big thing that was being done.

10:35 5 That's my --

6 Q When you were preparing that research,
7 did any of your review of the literature suggest
8 to you that illegal immigration was also a problem
9 in American?

10:35 10 A There's much literature to that
11 effect.

12 Q And what two states, if you could
13 limit it to two states, have had the majority of
14 illegal immigration in the United States?

10:35 15 A I wouldn't limit it to two states.

16 Q Okay. Where would you say they are?

17 A I would say -- I would say either
18 California -- or of five states.

19 Q All right. What five states?

10:36 20 A California, Texas, Florida, Illinois
21 and New York.

22 Q All right. Would you think that Texas
23 runs a pretty close second to California in terms
24 of illegal immigration?

10:36 25 A In terms of the volume?

10:36 1 Q Yes. Say, over the last 20 years.

2 A That probably is a good guess.

3 Q Do you know whether or not Texas would
4 actually rank ahead of California if we looked at
10:36 5 it, say, over the last 30 years?

6 A As a former Californian, I would doubt
7 that.

8 Q You've never lived in Texas, though,
9 have you?

10:36 10 A No.

11 Q Okay. Now, with regard to the illegal
12 immigrations that's occurred in Texas, are you
13 aware of whether or not the illegal immigrants
14 that establish their home in the United States are
10:36 15 entitled to Medicaid benefits?

16 A I'm not -- that's not an area I'm
17 knowledgeable about.

18 Q So you don't know one way or the
19 other?

10:36 20 A No, not for sure.

21 Q Okay. Well, assume with me that
22 illegal immigrants that establish themselves in
23 America are entitled to certain Medicaid benefits,
24 in other words, they get cancer and they have to
10:37 25 go to a hospital, we don't just let them die, we

37 1 take care of them. We take care of them with
2 public money.

3 Assuming that to be the case, okay,
4 will you agree that many of those folks would not
10:37 5 have been exposed to any of the information that
6 you provided to me in the four-plus boxes had they
7 spent a good portion of their lives in Mexico?

8 A No. I wouldn't agree because I have
9 no knowledge of what they would have been exposed
10:37 10 to in Mexico.

11 Q And by "exposed to," I mean exposed to
12 in terms of what they read.

13 A In Mexico, I have no knowledge.

14 Q Okay. So you haven't done any
10:37 15 independent study to determine what either illegal
16 immigrants into Texas or legal immigrants into
17 Texas may have known with regard to cigarette
18 smoking and its health effects prior to the time
19 that they came to Texas?

10:38 20 A Prior to the time they came to Texas,
21 no. I've done no research in Mexico.

22 Q And assume with me that that is at
23 least a significant number of the population in
24 the State of Texas, at least as far as those
10:38 25 persons are concerned. Prior to the time that

10:38 1 they got to the State of Texas, you can't say what
2 they knew one way or the other regarding cigarette
3 smoke and health, can you?

4 A What they knew in Texas -- I mean in
10:38 5 Mexico?

6 Q Right.

7 A I can't say.

8 Q Okay. Fair enough.

9 Will you agree with me that at least
10:39 10 some of the periodical material that was provided
11 to me doesn't have anything to do with smoking and
12 health?

13 A I would agree that it was -- when you
14 do research, you sometimes gather an item or two
10:39 15 that isn't exactly on point, that it's inevitable
16 in any large effort, but --

17 Q So you would agree?

18 A There might be some that would have --
19 though, it would be a small amount. It would be
10:39 20 very small. I'd rather gather a little more than
21 not enough.

22 Q Do you personally believe that smoking
23 causes cancer?

24 A I believe that it's a causing factor
10:40 25 in cancer, but as a citizen. I'm a historian and

40 1 it doesn't derive from that.

2 Q I'm just asking as a citizen.

3 A As a citizen.

4 Q Do you believe that cigarette smoking

10:40 5 causes heart disease?

6 A It is associated with a causing factor
7 in heart disease.

8 Q Do you believe that cigarette smoking
9 causes emphysema?

10:40 10 A As a citizen, I'm persuaded of that..

11 Q Do you believe that nicotine is an
12 addictive agent?

13 A As a citizen, I use the term addiction
14 as a citizen, not as a pharmacological expert.

10:40 15 Q Okay.

16 A And of course, of course I believe
17 that nicotine is habit forming and addictive,
18 habituating.

19 Q Have you reviewed any industry
10:40 20 generated materials which suggest that the
21 cigarette companies knew that smoking caused lung
22 cancer?

23 A I don't recall -- my research is not
24 into industry sources.

10:41 25 Q All right. So the answer to that

0:41 1 question would be no?

2 A I doubt very much if I've seen.

3 Q Have you reviewed any information
4 generated by the cigarette industry that suggests
0:41 5 that they knew that smoking caused heart disease?

6 A The same answer. I don't -- my
7 research is not in industry sources. If it -- if
8 it came out in the public media in a newspaper
9 article, a magazine article, I may have seen it.

0:4110 Q Can you cite to any specific newspaper
11 or magazine article that cites the tobacco
12 companies as a source of information that
13 cigarette smoking caused emphysema?

14 A Cigarette companies as a source of
0:4115 information that --

16 Q Right.

17 A -- cigarette smoking causes
18 emphysema?

19 Q Right.

0:4120 A I can't remember anything like that.

21 Q Can you remember anything like that
22 relative to lung cancer?

23 A Same question?

24 Q Yes, sir.

0:4125 A I can't remember that.

3:41 1 Q Anything like that in reference to
2 heart disease?

3 A Same question, same answer.

4 Q No?

10:42 5 A No.

6 Q All right. What about with regard to
7 the addictive nature of nicotine?

8 A There have been -- in the materials
9 that I have reviewed, there are news reports.

10:42 10 Q But do any of those news reports cite
11 to the cigarette industry or the cigarette
12 companies as a source of information that nicotine
13 is an addictive agent?

14 A That nicotine is?

10:42 15 Q Yes.

16 A Cigarette companies as a source that
17 nicotine is an addictive --

18 Q Yes.

19 A I don't think so.

10:42 20 Q Okay. Does any of your research
21 suggest that the tobacco industry manufacturers
22 produced their cigarettes in a composition to
23 provide a specific amount of nicotine?

24 A There is a controversy about that in
10:42 25 the materials that I have.

.0:42 1 Q Okay. In that controversy, are the
2 cigarette manufacturers quoted with regard to
3 that?

4 A On that controversy, they were quoted.

10:43 5 Q And what did they say?

6 A As I recall, they said we -- are
7 you -- are you referring to the issue that is
8 under the ABC also?

9 Q I am actually not talking about any
10:43 10 particular litigation issue. I'm just talking
11 about whether or not the cigarette companies took
12 a particular position on whether or not nicotine
13 was placed in cigarettes in a specific amount.

14 A There is an issue in the newspapers
10:43 15 and in the magazines and in public discussion in
16 the '90s.

17 Q Right.

18 A Rather a big issue for a while.

19 Q Right.

10:43 20 A About adding nicotine.

21 Q And what to you recall the cigarette
22 industry's response was?

23 A They denied that they added in the
24 sense -- as I recall, they denied that they
10:43 25 added -- in the sense that they added extra.

10:44 1 Q All right.

2 A It's a manufacturing issue.

3 Q Did you have an opportunity -- you've
4 provided several videotapes to me. Did you see
5 the videotapes that you provided to me?

6 A Yes.

7 Q Have you reviewed all those
8 videotapes?

9 A Yes.

10:4410 Q Did you see the videotapes in 1994 of
11 the cigarette industry executives appearing before
12 Congress and swearing that they did not believe
13 that smoking was addictive?

14 A I think so.

10:4415 Q Okay. Did they also swear that there
16 was no established link between cigarette smoking
17 and emphysema?

18 A I can't recall.

19 Q Okay. Did any of that information
10:4420 provided by the cigarette company executives who
21 swore to tell the truth in front of Congress in
22 1994, did any of that form the basis of any of the
23 opinions you're offering here today?

24 A The opinions I'm offering here today
10:4525 are formed on the basis of an enormous range of

0:45 1 material. Everything that I've seen goes into my
2 thinking, so that was in the news, I saw it. Like
3 everything else I saw, it's in the mix of things
4 that I assess.

0:45 5 Q Have you reviewed information which
6 suggests that the cigarette companies through a
7 campaign of advertising attempted to influence
8 public opinion on the -- on the truth about
9 cigarette smoking, smoking and its health
10:4510 consequences?

11 A I'm sorry. If you could do it again.

12 Q Yeah. Right. And let me apologize.
13 I'm getting a little dry in the mouth.

14 But have you reviewed any information
10:4515 which suggests that the cigarette industry through
16 their advertising means attempted to influence
17 public opinion as to the health consequences of
18 cigarette smoking?

19 A There are materials in the media in
10:4620 which the industry makes comments on the
21 controversy about health and -- of smoking and
22 health. They're there. I've read them. I read
23 them when I found them.

24 Q Will you agree with me that there have
10:4625 been instances in the past where the cigarette

3:46 1 industry has advertised their products as low tar
2 or low nicotine in an effort to give the public
3 some sense of -- of security that they're getting
4 a healthier cigarette?

10:46 5 A I agree with you that they advertise
6 with respect to low tar and low nicotine. Their
7 motives I don't know for sure, but I can assume as
8 a citizen --

9 Q All right.

10:46 10 A -- that they're attempting to respond
11 to public worry.

12 Q Okay. And to some extent would you
13 agree that advertising of that nature does have an
14 impact upon public opinion and might make people
10:47 15 feel a little more secure, a little safer?

16 A That's a good question. And my answer
17 is that as I have worked with this material, I see
18 no evidence, no credible evidence in my research
19 that the -- these ads you're speaking of
10:47 20 influenced public thinking or public debate.

21 There are some who argue that an ad that says your
22 throat won't hurt if you smoke our cigarette like
23 it does when you smoke the other cigarettes, that
24 that itself is a re -- reinforces. And I find
10:47 25 that plausible, but it's impossible to determine

0:47 1 what the American people derive from ads or --

2 Q Let me make sure I understood what you
3 just said. You said it is impossible for the
4 American public --

0:48 5 A It's impossible to determine with
6 absolute precision and total confidence what the
7 American public took from an ad.

8 Q Okay.

9 A In my opinion.

10:48 10 Q All right. Would you say that that is
11 also true relative to magazine articles?

12 A The way I stated it with absolute
13 precision, but you can certainly gain a sense of
14 how an issue is progressing in public discourse.

10:48 15 Q Will you also say that that's true
16 with regard to newspaper articles?

17 A When you say that is true, state again
18 what I'm agreeing.

19 Q You said that it's impossible to
10:48 20 determine what American public opinion is with
21 regard to an advertising ad or how they're
22 impacted by an advertising ad.

23 A With absolute precision.

24 Q Okay. And then you qualified it with
10:49 25 absolute precision, correct? Will you agree that

49 1 that's true with regard to newspapers, magazines
2 and periodicals, et cetera?

3 A No. There is a difference.

4 Q Okay. What is the difference?

10:49 5 A With respect to news reports and
6 articles and television broadcasts and radio
7 broadcasts and the ongoing discussion of
8 cigarettes and health, you can tell very -- very
9 well how the argument is going, and who is -- who
10:49 10 is being listened to, who is having influence,
11 what messages are being heard.

12 Q So you think that -- are you here to
13 state that you believe that news magazines,
14 periodicals, newspapers and television, to the
10:50 15 extent that they are factually reporting something
16 historic, for instance, or a report, have more
17 influence than an advertising campaign, for
18 instance, say the Joe Camel advertising campaign?
19 Do you think that those things have more impact
10:50 20 than an advertising campaign waged by the industry
21 using Joe Camel?

22 A Yes.

23 Q Okay. Now, have you done any poll to
24 arrive at that --

10:50 25 A Done any polling?

0:50 1 Q Done any polling to arrive at that
2 opinion?

3 A No.

4 Q Have you done any polling at all
0:50 5 whatsoever with regard to the issue of smoking and
6 health in the State of Texas?

7 A Personally?

8 Q Yes, sir.

9 A No.

0:50 10 Q All right. Has anyone at your
11 direction conducted any polling in the State of
12 Texas to determine what Texans' attitudes are with
13 regard to cigarettes and health?

14 A No.

0:51 15 Q Have you done any canvassing in terms
16 of making telephone calls and taking down
17 responses from just citizens there in the State of
18 Texas regarding smoking and health?

19 A No.

0:51 20 Q Has anyone at your direction?

21 A No.

22 Q Is it fair for me to assume that the
23 opinions that you're offering in your report are
24 based solely upon your review of documents that
10:51 25 you feel like reference smoking and the health

51 1 issue that have been disseminated in the State of
2 Texas?
3 A And in the nation.
4 Q And in the nation?
10:51 5 A And in the nation.
6 Q Fair enough. Okay.
7 A Texans obviously read national
8 magazines.
9 Q Sure.
10:51 10 A Travel.
11 Q Have you done anything to determine
12 what percentage of Texans, for instance, read Time
13 magazine?
14 A No. I don't have that percentage.
10:51 15 Q All right. Have you done any research
16 to determine what percentage of Texans read US
17 News & World Reports?
18 A No.
19 Q Have you done any study to determine
10:52 20 what percentage of Texans read any of these
21 publications?
22 A No.
23 Q You can't testify today or even
24 September 29th when we go to trial in this case to
10:52 25 what extent an article on medicine and health out

1 of Reader's Digest, to what extent it may have
2 made it to -- to a farm worker in south Texas, for
3 instance?

4 A I have a -- yes, I could -- I'm not
5 agreeing with you. I'm disagreeing. I don't know
6 which farm worker you're talking about.

7 Q Okay. Let's assume that it's a farm
8 worker that immigrated to the United States,
9 either legally or illegally in the '70s. To what
10 extent do you think he reads articles in Reader's,
11 Digest on cigarette smoking and health?

12 A If he doesn't read Reader's Digest,
13 there's so many other sources, the church, the
14 family.

15 Q Are there any articles that are in the
16 materials that you provided to me that are from
17 the churches?

18 A Yes. Yes.

19 Q Okay. Can you reference which ones?
20 What church?

21 A For example, the largest Baptist
22 church in Dallas is the First Baptist Church in
23 Dallas.

24 Q All right.

25 A Very popular minister there,

53 1 W.T. Chriswell, '40s and '50s --

2 Q Yes, sir.

3 A -- is reported more than once in the
4 documents that I found as an avid opponent and an
10:54 5 outspoken opponent of smoking and tobacco. That
6 would be an example.

7 Q What kind of impact would that have on
8 Catholic folks?

9 A I don't know. Possibly they have
10:54 10 friends who are Baptist.

11 Q Isn't it hard to say, though, Doctor?
12 I mean, really, in terms of public opinion, aren't
13 people influenced differently by different
14 mediums? There are some people that never read
10:54 15 news magazines, correct?

16 A I'm sure there are.

17 Q There are some people that never watch
18 television as hard as that is to believe.

19 A There may be.

10:54 20 Q All right. There are some people that
21 absolutely would not pick up a newspaper if it
22 were shoved in their face?

23 A That may be.

24 Q All right. And you have done no
10:54 25 independent study to determine what level of any

10:54 1 of these materials are read by teenagers, have
2 you?

3 A You see guesses about that.

4 Q Have you done any research to
10:55 5 determine it?

6 A Not directly.

7 Q Do you have an opinion -- and I'm
8 going to ask you not an expert question. I'm
9 going to ask you a lay opinion. Do you have a lay
10:55 10 opinion as to whether or not a teen is more likely
11 to be influenced by television ad or US News &
12 World Reports articles?

13 A Lay opinion?

14 Q Yes.

10:55 15 A Lay opinion. As the father of
16 teenagers more than once.

17 Q Yes, sir. Of course, your kids may
18 have been exceptional. Who knows?

19 A We're all Americans.

10:55 20 Q Right.

21 A We talk to each others.

22 Q That's right.

23 A We talk to our neighbor's fathers.

24 We're influenced by the rabbi and the minister and
10:55 25 the priest. In the school -- in the school, there

1 is mandated instruction at many grade levels in
2 the State of Texas as in many other states. There
3 has been for years. It is impossible for me to
4 imagine a person whether they read the newspaper
10:55 5 or not escaping the reputation of tobacco and its
6 intense feelings about that product.

7 Q Will you agree that there were
8 articles that were published in advertising which
9 could have led people to conclude that
10:5610 cigarette -- cigarette smoking wasn't as bad for
11 you as everyone was saying?

12 A I can't speculate about --

13 Q For instance, the ads regarding Skoal
14 when it first came out, did you review any ads
10:5615 regarding Skoal?

16 A I occasionally see them.

17 Q Do you remember how it was referred to
18 as the safe alternative of cigarette smoking?

19 A It may have been.

10:5620 Q All right. Do you have an opinion as
21 to whether or not that's true?

22 A Personally?

23 Q Yes, sir.

24 A That Skoal is --

2:5625 Q A safe alternative to cigarette

10:56 1 smoking?

2 A I wouldn't use it.

3 Q Okay. Will you agree with me that an
4 ad of that nature can mislead a teenager into a
10:57 5 false sense of security that the product that they
6 were using couldn't harm them?

7 A My own view is the ads are ads, and
8 the American people know what an ad is. It's a
9 message from the manufacturer to buy his product,
10:57 10 and that other information has much more impact.,

11 Q Well, don't you agree, though, that
12 manufacturers have an ethical responsibility to be
13 truthful in their advertising?

14 A I suppose so. I'm a historian, but as
10:57 15 a citizen, that sounds like what manufacturers
16 could do, should do.

17 Q All right. And if they were
18 untruthful in their advertising and withhold that
19 information, withhold information that is contrary
10:57 20 to what they're saying in their advertising, can
21 that affect public debate on a particular issue?

22 A If they're untruthful, they're in
23 trouble with the FDC.

24 Q Okay. Well, did you have an occasion
10:58 25 to review the newspaper a couple of days ago when

58 1 the chairman of Liggett gave testimony in the case
2 down in Florida?

3 A I saw a couple of newspaper articles.
4 They were brief.

10:58 5 Q All right. And his name is Bennett
6 LeBow, and he testified that the industry was
7 aware that cigarette smoking causes cancer, and
8 that it was addictive. Did you -- did you see
9 that?

10:58 10 A I can't remember if it was exactly as
11 you say, but --

12 Q Well, he said -- and let me quote, We
13 believe from many people smoking is very
14 addictive. He was then asked, Does smoking cause
10:58 15 lung cancer, heart and respiratory disease and
16 emphysema? And he said, The answer is yes.

17 A I'll take your word for it.

18 Q All right. Isn't that exactly
19 contrary to what he said back in 1994 when he
10:58 20 testified in front of Congress?

21 A I don't know. I don't remember.

22 Q Isn't that directly contrary to what
23 the other industry representatives testified to in
24 front of Congress back in 1994?

10:59 25 MR. PURVIS: Just for the record,

0:59 1 I'm going to object. I don't believe Mr. LeBow
2 testified in front of Congress in '94.

3 Q (By Mr. Morris) Okay. As for the
4 other industry executives that did testify before
0:59 5 Congress in 1994, isn't that directly contrary to
6 what they said?

7 A I don't know. They testified on
8 addiction, and you have to have definitional
9 problems, so I don't know.

0:5910 Q I asked you earlier whether or not you
11 had reviewed any internal industry documents
12 regarding their cover-up of information regarding
13 the health consequences of tobacco, and let me
14 make sure that I'm clear about this. Have you
0:5915 reviewed any newspaper accounts or periodicals or
16 magazine accounts that specifically discuss the
17 conspiracy to cover up information by the tobacco
18 industry?

19 A Thousands of articles. There may have
11:0020 been -- I don't know. I'm not testifying that
21 I've seen those records exactly.

22 Q All right.

23 A There are articles that complain about
24 not having enough information from an industry,
11:0025 but that's -- that's part of the discussion.

00 1 Q Do you believe that the conspiracy or
2 their cover-up of the information, assuming it is
3 true, just assuming that for the moment, had any
4 impact on what the public received as common
11:00 5 knowledge during the '60s, '70s, and '80s?

6 A That question is so complex.

7 Q Yes, it is.

8 A Could you rephrase one time?

9 Q Sure. And maybe I can break it down
11:00 10 for you.

11 In your study of history, are the
12 pivotal events that occur that serve as a marker
13 for the beginning of an era, the end of an era,
14 the beginning of a time frame? For instance, when
15 the Japanese bombed Pearl Harbor that was the
16 introduction of the Americans into the World War
17 II, correct?

18 A Yes.

19 Q Do you have a particular date that you
11:01 20 set as the date that the public was first
21 generally aware in the State of Texas smoking
22 causes lung cancer?

23 A There's no date of that -- that --
24 that smoking might cause, among other things, lung
11:01 25 cancer.

1:01 1 Q I didn't say might cause. I said
2 smoking does cause.

3 A Does cause.

4 Q Does cause.

1:01 5 A I believe that it does cause. That
6 belief, that suspicion? --

7 Q Yes.

8 A -- has been a part of American life
9 for 200 years, Texas as well as Alabama,
1:0110 Mississippi, Michigan.

11 Q Okay. So you're saying that 200 years
12 ago, it was common knowledge among Texans that
13 cigarette smoking causes cancer?

14 A There wasn't any Texas then.

1:0215 Q Okay. Fair enough.

16 Two hundred years in a territory that
17 was under the control of either the Indians or the
18 Mexicans, would you say that that territory knew
19 that smoking caused cancer?

1:0220 A My research has been on the United
21 States of America, and I'm not sure about the
22 pre-United States of America part of the
23 southwest.

24 Q Well, let's talk about Texas when we
1:0225 weren't part of the United States of America, from

1836 to 1845. During that time period, do you have an opinion as to whether it was common knowledge in Texas that cigarette smoking caused lung cancer?

A I have an opinion.

Q What is your opinion?

A My opinion that Texans in that time frame at that time were fully aware of, and some of them believed, and some of them may not have,

but they were fully aware that there were many prominent Americans that have been alleging all sorts of fatal and nonfatal, semi-fatal, moral, economic ills that tobacco smoking would bring or tobacco use would bring, and that was a part of the culture that those people took into Texas when they went from Arkansas or wherever they came from.

Q What about the ones that came from Tennessee?

A Same. It's America. Same. I believe there's --

Q Were they growing tobacco in Tennessee in 19 -- or 1836?

A I rather imagine so.

Q All right. And do you think that

11:03 1 those former tobacco farmers that moved to Texas
2 thought that that was bad for their health?

3 A In the state of North Carolina, we had
4 both friends of tobacco and enemies.

11:03 5 Q All right. Do you think in 1836 to
6 1845 that Texans were aware that smoking caused
7 emphysema?

8 A Same answer. There was a broad, wide,
9 deep historical critique of tobacco. It alleged
11:03 10 everything you can think of. If the word
11 emphysema was in the vocabulary, it would allege
12 that. You could find it. It was there in the
13 culture.

14 Q Okay. And you're saying that this
11:04 15 information went back 200 years?

16 A More.

17 Q How far back did it go, Doc?

18 A Ah --

19 Q Is there anything mentioned in the
11:04 20 Bible about it?

21 A Tobacco? I think not.

22 Q Okay. All right. So we can at least
23 say 2,000 years ago, there probably wasn't
24 anything talked about in terms of health

11:04 25 consequences of tobacco?

3:04 1 A We're not sure.
2 Q We're not positive, are we?
3 A Because the American Indians were
4 using tobacco 8,000 years ago, and their
11:04 5 discussion I can't get information on.
6 Q Did they just not leave a specific
7 enough record for us to review in terms of
8 whatever they scrolled on cave walls or whatever?
9 Is that why we don't know?
11:0510 A I can't find it.
11 Q Is that a yes?
12 A That's a yes. I can't find knowledge
13 of American industry discussion of tobacco.
14 There's reliable knowledge about how much they
11:0515 treasured it, and it was used and grown all the
16 way from Brazil to Canada. So we know that. We
17 know they treasured it, they carried it around,
18 they grew it, they used it. But what they said
19 about it, I can't get much information.
11:0520 Q When is the first medical report --
21 when was the first medical report referencing a
22 link between smoking -- cigarette smoking and
23 emphysema that you recall?
24 A Medical?
11:0525 Q Yes.

1:05 1 A Emphysema?

2 Q Yes, sir. And you can give me a
3 century.

4 A Oh, well, I would -- I would not be
1:05 5 surprised if the late Nineteenth Century. I am
6 certain we could find a growing literature in the
7 inner war years in the '20s and '30s, emphysema,
8 probably in the Nineteenth Century.

9 Q What about with regard to heart
1:0610 disease?

11 A Oh, much earlier. Much earlier.

12 Q When was the first medical report
13 released linking cigarette smoking with heart
14 disease?

1:0615 A I don't know the first, but I -- I
16 would nominate, as a prominent early one,
17 Dr. Benjamin Rush, the signer of the Declaration
18 of Independence published a book, more than one
19 book. He was very into this, but he published a
1:0620 book in 1806, and he alleged 50 ills in which
21 heart -- with various forms of heart ailments.
22 It's a long time ago.

23 Q Did any of your research discuss the
24 number of Americans that smoked cigarettes at its
1:0625 height?

3:06 1 A Yes.

2 Q What percentage of Americans smoked

3 cigarettes at the height of usage?

4 A I think the percentage would be

11:06 5 42 percent of adults, which is very close to half,

6 not quite. A little under half.

7 Q What year would that have been?

8 A I could be off a little. The peak is

9 probably -- percentage now, now just percentage.

11:07 10 Q Right.

11 A Sometime in the '60s.

12 Q Sometime in the '60s. All right.

13 With regard to that percentage of Americans that

14 smoked cigarettes, do you know how many of those

11:07 15 folks began smoking in their teens?

16 A I don't know.

17 Q Have you read --

18 A As I sit here today, I don't know.

19 Q Have you read any reports that suggest

11:07 20 the percentage of regular smokers that began

21 smoking in their teens?

22 A Yes. I read it.

23 Q And what does your review of the

24 literature suggest to you is a fair number?

1:07 25 A Of people who start?

11:07 1 Q In their teens.

2 A A large number.

3 Q All right. Have you read reports that

4 suggest that maybe 80 percent of regular smokers

11:08 5 began smoking in their teens?

6 A I can't recall that figure exactly.

7 Q Well, can you recall a figure of

8 90 percent?

9 A No. I think that's outside the bounds

11:0810 of what I remember, but a large number.

11 Q Okay. Do you have any explanation for

12 why in the world 42 percent of Americans, over

13 100 million people, would be engaging in such a

14 deadly habit if the information that you suggested

11:0815 was so widely known to all of us, as far as 200

16 years ago?

17 A Or before.

18 Q Or before.

19 A Yes. In the rich mounds of material

11:0820 I've read, there are many people who ask that

21 important question. I think a clue would be in

22 the concluding page in Jerome Brooks' fine book

23 The Mighty Leaf, written in 1950 before the lung

24 cancer square became quite what it was, and he

11:0925 said, To half the world, tobacco was abomination,

3:09 1 to the other half, a cherished necessity. That
2 statement holds for the entire history of review.
3 People fall into two warring camps on this
4 product.

11:09 5 Q Will you agree that another
6 explanation or an explanation that's not
7 necessarily different from his explanation might
8 be that the reason people fall in love with it is
9 because the pharmacological properties of
11:0910 nicotine?

11 A It's obvious in the history people
12 have written many, many things, poems, songs about
13 both for and against. So there's as much evidence
14 in these boxes and the whole larger world of
11:0915 discussion of tobacco, there's much discussion of
16 why people do it and why people -- they hate
17 people that do it -- the doing of it.

18 Q Well, actually my question was: Do
19 you believe that people fall in love with it
11:1020 primarily due to the pharmacological effects of
21 nicotine?

22 A As a historian, I can tell you that
23 there's much in the record about that. They
24 like -- clearly or repeatedly tobacco has
1:1025 nicotine, and nicotine does things that some

1:10 1 people like.

2 Q Have you reviewed documents that
3 suggest that nicotine is an addictive agent much
4 like cocaine or heroine in terms of its influence
1:10 5 upon the central nervous system of the brain?

6 A I read that argument.

7 Q Do you believe that Americans are
8 influenced by the position that the Surgeon
9 General takes on a particular health issue?

1:1110 A The Surgeon General's statements on
11 this, as well as other issues, but especially on
12 tobacco, which is my subject --

13 Q Yes.

14 A -- have been widely reported by the
1:1115 media, which is the media's way of saying, this is
16 of interest to our readers.

17 Q My question was, though: Do you
18 believe that Americans are influenced by the
19 position that the Surgeon General takes on a
1:1120 particular issue?

21 A I'm sure his voice has influence.

22 Q All right. Have you reviewed the
23 Surgeon General's reports, the reports of the
24 public health system from, say, 1964 to the
1:1125 present?

11:11 1 A Yeah.

2 Q Do you recall which Surgeon General's

3 report first suggested that there was a causative

4 link between cigarette smoking and lung cancer?

11:11 5 A Suggested that there was?

6 Q Yes, sir.

7 A Or might be?

8 Q Yes, sir.

9 A That would be -- you said the Surgeon

11:12 10 General -- the first Surgeon General's report?

11 Q Yes, sir.

12 A If you define as a report a statement

13 by the Attorney General of the United States --

14 Q Uh-huh.

11:12 15 A -- Surgeon General, it would be 1957.

16 Q Okay. What did he say in 1957 that

17 leads you to believe that the government concluded

18 that there was a cause --

19 A That there might be.

11:12 20 Q -- a causal relationship?

21 A There might be.

22 Q Okay. You're saying "might be." I

23 wanted to ask you when the government had actually

24 determined that there was a causal relationship.

11:12 25 A The best statement --, the best date

1:12 1 would be 1964.

2 Q Okay. When was the first time that
3 the Surgeon General determined that cigarette
4 smoking was addictive due to nicotine?

1:12 5 A I -- I'd like to review, but I believe
6 that -- that position is taken in the Surgeon
7 General's report of 1979.

8 Q Would it surprise you to learn that
9 that position was not officially embraced by the
1:1310 Surgeon General until 1988?

11 A Now that you say it, I like that year
12 better.

13 Q Okay. Now, will you agree with me
14 that in reviewing public opinion or common
1:1315 knowledge that one of the sources that we would
16 like to go to determine what was common knowledge
17 may include government records, things like the
18 Surgeon General's reports?

19 A As evidence of what is common
1:1320 knowledge?

21 Q Yes, sir.

22 A If the Surgeon General's report is
23 read and discussed, it becomes a part of a
24 large -- a larger discussion, then -- then -- I
1:1325 forget the end part of the question.

13 1 Q Well, you will agree that the Surgeon
2 General's report of 1964 certainly was reported in
3 Time magazine and Newsweek magazine?

4 A Certainly.

11:14 5 Q US News & World Reports and a number
6 of other magazines?

7 A Yes, sir. Widely --

8 Q All right. And as such, then it is
9 one of the -- one of the contributing factors to
11:14 10 public opinion?

11 A Yes. It certainly shaped public
12 opinion.

13 Q All right. Will you agree that the
14 Surgeon General's report is an extensive and
11:14 15 authoritative study of the issue of cigarette
16 smoking and health?

17 A It's extensive.

18 Q Yes.

19 A And the most authoritative thing the
11:14 20 government had yet said.

21 Q Okay. Have you ever seen, for
22 instance, a report that was subjected to more peer
23 review than the Surgeon General's report on
24 cigarette smoking?

11:14 25 A I don't know. There may have been

11:14 1 reports, but it was much peer review.

2 Q Will you agree with me that the
3 Surgeon General's report is relied upon by medical
4 practitioners, editorialists, news agencies and
11:15 5 other people who are not experts in smoking and
6 health?

7 A I would agree that it has considerable
8 influence.

9 Q For instance, if you're a small town
11:15 10 practitioner in Tyler, Texas, or Texarkana for
11 that matter, and you deal with the day-to-day
12 coughs, colds and runny noses that might come
13 through your office, but you just don't know a
14 whole lot about the ill effects of cigarette
11:15 15 smoking, would the Surgeon General's report be a
16 good place for you to go to find out?

17 A It would be a -- it seems to me if you
18 were a doctor, you should be acquainted with the
19 publication of the Surgeon General.

11:15 20 Q Okay.

21 A Just be acquainted with them.

22 Q Do you believe that the government has
23 given careful consideration to the issue of
24 smoking and health over the last 20, 30 years?

11:16 25 A It's given a lot of consideration.

11:16 1 Q Do you believe that the Surgeon
2 General report -- Surgeon General's report
3 accurately reflects the accepted state of -- of
4 the art of medical opinion when it's rendered?

11:16 5 A In general?

6 Q Yes, sir.

7 A I don't -- I don't know. I'm not an
8 expert in the general state of medical opinions,
9 so whether any Surgeon General's report --

11:1610 Q Well, do you feel like the Surgeon
11 General does his best or his staff or the public
12 health service and the numbers of doctors that
13 work on compiling that report, do you feel like
14 they do their best to review information that is
11:1615 as current as possible?

16 A I'm sure they do.

17 Q Okay. Along those same lines, do you
18 believe that the public health service has
19 provided information to the public in a timely
11:1720 fashion when those conclusions are reached?

21 A I don't know what timely fashion
22 means. I'm aware that the public health service
23 produces many reports and circulates them widely.

24 Q Have you reviewed any information
11:1725 which suggests the federal government consciously

11:17 1 withheld pertinent information from the public
2 regarding health consequences of smoking?

3 A The federal government?

4 Q Yes, sir.

11:17 5 A Any part of the federal government?

6 Q Yes, sir.

7 A Withheld?

8 Q Yes, sir. Consciously withheld
9 information regarding the health consequences of
11:1810 smoking from the public.

11 A There are a couple of words that I'd
12 like you to repeat, so could you do that sentence
13 again?

14 Q Yeah. Are you aware of any
11:1815 information whatsoever that suggests that the
16 federal government consciously withheld pertinent,
17 relevant information from the public regarding the
18 health consequences of smoking?

19 A I can't recall such an occasion. I
11:1820 can't say that -- there's so much that is said out
21 there. Someone might have alleged it. I can't
22 remember.

23 MR. MORRIS: Why don't we take a
24 break.

11:1825 THE VIDEOGRAPHER: We're off the

11:18 1 record. The time is 11:18.

2 (A recess was taken.)

3 THE VIDEOGRAPHER: This is the
4 start of tape number two. We're back on the
11:34 5 record. The time is 11:34.

6 Q (By Mr. Morris) Doctor, I'm going to
7 get back to discussing with you the Surgeon
8 General's reports in just a minute, but I'd like
9 to digress for just a minute.

11:34 10 Earlier we had a brief discussion, and
11 I apologize if I wasn't as detail-oriented as I
12 should have been with you regarding your opinion
13 regarding the state of knowledge regarding
14 cigarette smoking and cancer, and we stretched it
11:34 15 back at least 200 years, and you say it may have
16 been before that.

17 And I believe you answered that
18 question after I had asked you whether or not
19 there was any pivotal point where cigarette
11:35 20 smoking and cancer, their causal link became
21 common knowledge to the folks in the State of
22 Texas. Let me -- let me see if I can back up and
23 go through this with you one at a time and see if
24 I can get some precise dates from you.

11:35 25 Have you establish a precise date as

1:35 1 to when the link between cigarette smoking and
2 cancer was common knowledge to the citizens of the
3 State of Texas?

4 A A possible link between cancer -- any
1:35 5 kind of cancer?

6 Q No. Lung cancer.

7 A Lung cancer.

8 Q And cigarette smoking.

9 A Let me see how to answer that.

1:35 10 There -- there are two answers, two sides, two
11 sides to one answer.

12 Q Okay.

13 A I tried to give the first answer
14 before.

1:35 15 Q And that is that we've known about it
16 since the beginning of time?

17 A It had been alleged for a very long
18 time.

19 Q Okay.

1:36 20 A I mean, back in --

21 Q And I'm not talking about an
22 allegation. I'm talking about reasonable
23 information based on studies that a person could
24 rely upon.

1:36 25 A Medical?

Q Yeah.

A Scientific?

Q Medical scientific to conclude that cigarette smoking causes lung cancer.

A The -- the medical opinion that cigarette smoking causes, among other things, cancer, among other things, lung cancer, could have been found in the Nineteenth Centuries, but the level of medical science does reach a new point in 1950, right around 1950 with respect to lung cancer, yes.

Q And at what point was that study disseminated to the folks of the State of Texas to such an extent that you would believe that it's common knowledge to Texas --

A Yes.

Q -- that cigarette smoking causes cancer?

A It was disseminated immediately. And if I were pressed for a date when I can see that this is common knowledge in Texas, as elsewhere, I would say there's a Gallup poll in 1954 in which people asked if they had heard that cigarette smoking could cause lung cancer, and 88 percent of the Americans asked said yes, they had heard. I'd

11:37 1 call that common knowledge.

2 Q Okay. They had heard that it could
3 cause it, but will you agree with me that as of
4 the mid-1950s, there was still a controversy in
11:37 5 the medical and scientific community as to whether
6 or not, in fact, it did cause cancer?

7 A I agree with that.

8 Q Have you established a date which you
9 believe that that controversy no longer existed,
11:38 10 or does it still exist?

11 A I wouldn't -- I couldn't offer a date
12 at which a controversy could be said to be simply
13 not there.

14 Q Would you agree, then, that there is
11:38 15 still some controversy regarding whether or not
16 cigarette smoking causes lung cancer?

17 A Not much.

18 Q Are you aware that there had been
19 experts retained in this litigation by the
11:38 20 cigarette industry companies who suggest that
21 cigarette smoking does not cause lung cancer?

22 A I'm not aware.

23 Q Have you reviewed any of their
24 reports?

11:38 25 A No.

38 1 Q Have you spoken to any of the medical
2 doctors that have been retained by the cigarette
3 industry?

4 A No.

11:38 5 Q Have you spoken to any scientists that
6 have been retained by the cigarette industry?

7 A No.

8 Q Have you spoken to any
9 epidemiologists?

11:38 10 A No.

11 Q Okay. So that we're clear, and let me
12 digress one more time. I apologize for doing
13 this, but this is for the sake of trying to get
14 through this as quickly as we can. You will agree
11:39 15 with me that you're not here today to offer any
16 what are termed expert opinions in the area of
17 psychiatry?

18 A I agree.

19 Q In the area of psychology?

11:39 20 A I agree.

21 Q In the area of medicine from the
22 standpoint that you have been professionally
23 trained?

24 A I agree.

11:39 25 Q And let me ask you the question that

11:39 1 way. Have you been professionally trained in
2 psychiatry?

3 A No.

4 Q Psychology?

11:39 5 A No.

6 Q Medicine?

7 A No.

8 Q Biology?

9 A No.

11:39 10 Q Public health?

11 A No.

12 Q Epidemiology?

13 A No.

14 Q Sociology?

11:39 15 A No.

16 Q Pharmacology?

17 A No.

18 Q Communications?

19 A No.

11:39 20 Q Political science?

21 A Professionally trained?

22 Q Yes, sir.

23 A No.

24 Q Lobbying?

11:39 25 A No.

11:40 1 Q Okay. What about polling? Have you
2 ever conducted polling yourself?

3 A No.

4 Q Did Mr. Barringer conduct any polling
11:40 5 in this case for you?

6 A No.

7 Q Did anyone else conduct any polling in
8 the State of Texas at your behest or the cigarette
9 company's behest, to the best of your knowledge?

11:40 10 A No.

11 Q Okay. Getting back to this discussion
12 of time lines. So you say that in the early '50s,
13 the information was becoming available that there
14 might be a relationship between cigarette smoking
11:40 15 and lung cancer, correct? Is that what your
16 testimony is?

17 A No.

18 Q What is your testimony?

19 A That's -- that sort of information was
11:40 20 available before, but that was in 1950, is that
21 the -- a new -- epidemiological studies began to
22 mass and point in this direction. It's a new form
23 of evidence in the medical discussion.

24 Q All right. What about the Wynder
11:41 25 report?

11:41 1 A That's what I'm thinking of.

2 Q Are you thinking of that report
3 specifically?

4 A I'm thinking of the Graham Wynder
11:41 5 reports that began verbally in '49 and were
6 published in JAMA 1950 and then continued.

7 Q You're not here to testified today,
8 though, that a large portion of the citizens of
9 the State of Texas read JAMA, are you?

11:4110 A No. I wouldn't testify that a large,
11 number of the citizens in Texas read JAMA.

12 Q Okay. You mentioned the Gallup poll
13 of 1954. Were there any other polls that were
14 released in that time period that dealt with
11:4115 cigarette smoking and the consequences of
16 cigarette smoking?

17 A Yes. Many.

18 Q Can you cite to any of those
19 specifically for me here today?

11:4120 A Oh, there are so many polls. The
21 Gallup people started to poll on tobacco -- I'm
22 not sure the exact year when they started, but
23 they never let up. They added tobacco questions.
24 The same thing true with Roper, so that the polls
11:4225 just -- the file on poll -- polls are just

11:42 1 enormous number of polls.

2 Q Have you reviewed any of those polls
3 in arriving at your conclusions here today?

4 A Yes.

11:42 5 Q Do you have any of those polls
6 available for review by the plaintiffs in this
7 case, since they weren't furnished to us in the
8 disclosure?

9 A The --

11:42 10 MR. PURVIS: Point of
11 clarification. They were disclosed to you in the
12 box. The Gallup poll he's referred to is
13 produced.

14 Q (By Mr. Morris) Are you aware of any
11:43 15 other polls that were produced other than the
16 Gallup poll of 1954?

17 A Yes.

18 Q What other polls were produced?

19 A As I said, the Gallup poll publishes
11:43 20 its polls -- publishes it for anyone who wants to
21 read it every -- quarterly. Roper does the same
22 so that there are just so many polls it's hard to
23 answer a question about a --

24 Q I asked you whether or not you were
11:43 25 aware of any other polls that were produced to us?

1:43 1 A Oh, there should be -- you should have
2 a -- you should have the polling -- the summaries
3 of polling in the Surgeon General's report in
4 1989, which is very, very, very, very full review
1:44 5 of polling data all the way back.

6 Q Okay. I didn't see it, and --

7 MR. PURVIS: You have to get to
8 the Bates stamp number to refer to it?

9 MR. MORRIS: Yeah. If you could
1:4410 do that, then I could probably at least satisfy my
11 own curiosity because I don't recall seeing it.

12 Q (By Mr. Morris) Okay. All right. So
13 we know that at least your opinion here is that in
14 the early to mid-1950s, you believe that it was
1:4415 common knowledge in the State of Texas that there
16 was a link between cigarette smoking and lung
17 cancer, correct? Is that your testimony here
18 today?

19 A People had heard that there was a
1:4420 link.

21 Q Okay. All right. Would you state --
22 say that the matter was still a matter of
23 controversy at that time?

24 A Yes.

1:4525 Q Do you have an opinion as to whether

11:45 1 or not the citizens of the State of Texas were
2 also aware that cigarette smoking could cause
3 heart disease during that time period?

4 A Yes. Yes.

11:45 5 Q To the same extent that they were
6 aware of the link between smoking and lung cancer
7 or to a lesser degree?

8 A The polls on that, and there may be a
9 slightly -- one may be slightly ahead of the
11:45 10 other. At this time, cancer historically, and
11 especially lung cancer, but cancer and especially
12 lung cancer were emerging rapidly in the -- in the
13 concerns of Americans. Cancer was becoming a
14 leading killer. It was passing heart disease just
11:45 15 about at this time, or approaching. So there's an
16 intensity about cancer and a newness about the
17 cancer scare that sets it a little apart from the
18 heart, which was a somewhat more -- it had been an
19 issue that had been there before.

11:46 20 Q What about relative to emphysema?

21 A I'm not exactly sure when the
22 emphysema -- what to say about when the emphysema
23 issue -- there's no date. It starts to appear as
24 a chronic disease. It's a chronic disease. And
11:46 25 as a killer, and as a respiratory problem, it

1 starts to emerge. I don't have a date in which I
2 can say anything striking about emphysema. It
3 appears as a worry.

4 Q So you don't have a particular date --

5 A I don't have a date.

6 Q -- on emphysema of common knowledge in
7 the State of Texas?

8 A Well, I'd say by the mid or late '50s,
9 a cluster of respiratory and heart illnesses are
10 beginning to be -- larynx --

11 Q Okay.

12 A -- are beginning to be widely
13 discussed, and you see these words by the mid to
14 late 50s, and then continuously.

15 Q Do you have a date that you would set
16 as a pivotal time when most Texans considered, as
17 a matter of common knowledge, smoking -- cigarette
18 smoking to be addictive due to nicotine?

19 A From the beginning of Texas?

20 Q Okay. Now, I'm speaking relative
21 to -- let me back up. Let me be clear about
22 this. Do you have an opinion as to when it was
23 first common knowledge in Texas that cigarette
24 smoking was addictive due to nicotine?

25 A I would say that the addiction, the

48 1 habit-forming, the hard-to-quit quality of
2 tobacco, general, cigarettes in particular, is a
3 part of common knowledge.

4 Q Well, you say that's been a matter of
11:48 5 speculation for a long time?

6 A Speculation.

7 Q Correct.

8 A Yes.

9 Q Now, I want to draw a distinction
11:48 10 between the speculation about cigarette smoking as
11 an addictive habit and knowledge of the public
12 that that addiction was caused due to nicotine.
13 Do you understand the distinction that I'm
14 drawing?

11:48 15 A I think -- I think that I do.

16 Q In the course of your research, did
17 you analyze the state of common knowledge with
18 that specific inquiry in mind?

19 A Yes. Among others.

11:48 20 Q Okay. And at what point in your
21 opinion was it common knowledge among Texans that
22 the addictive nature of cigarettes was due to
23 nicotine?

24 A I can't find a time when the -- in the
11:49 25 discussion of tobacco's qualities and cigarette

1:49 1 smoking's qualities that there wasn't a public --
2 widespread public carried about slang, carried
3 about all the media that we talked of that I
4 talked of -- that I can't remember when there
1:49 5 wasn't a time when there wasn't a recognition that
6 nicotine in the cigarettes was associated with the
7 hook.

8 Q Why in the world, then, would it take
9 the Surgeon General until 1988 to conclude that
1:49 10 the addictive quality of cigarettes was due to
11 nicotine?

12 A I think the answer to that is he and
13 everybody else knew that it was addictive by a
14 general common understanding of addictive, but the
1:49 15 Surgeon General is a scientist, and the
16 scientific, pharmacological definition of
17 addiction is a more complicated matter, a much
18 more complicated matter, so I have no trouble
19 understanding why to bottle that one out, among
11:50 20 the scientists took that long, but Surgeon
21 General's great-granddaddy knew that it was
22 habit-forming.

23 Q So from a scientific standpoint,
24 you're saying that his ability to conclude that
11:50 25 the addictive nature of cigarettes was due to

50 1 nicotine, although we may have suspected that, may
2 not have been proved until 1988, to his -- to his
3 satisfaction?

4 A It's a medical -- it's a medical
11:50 5 issue. I'm not a medical doctor, so I don't think
6 I could answer that question.

7 Q Well, you agree that medical
8 practitioners in the State of Texas rely upon
9 scientific information in order to treat their
11:50 10 patients?

11 A I don't really have an opinion on --

12 Q Do you hope that your own personal
13 doctor --

14 A I sure do.

11:50 15 Q -- relies upon scientific
16 information --

17 A I do.

18 Q --- in order to treat you and your
19 family?

11:51 20 A I do.

21 Q Okay. And will you agree that if your
22 own doctor had been provided with information back
23 in 1964 by the Surgeon General of the United
24 States that cigarette smoking causes lung cancer,
11:51 25 that it would be reasonable for him to tell his

1:51 1 patients that?

2 A Well, I -- I don't know what's
3 reasonable for doctors to do, but it doesn't sound
4 unreasonable.

1:51 5 Q Okay. If -- if in 1964, though, he
6 was not provided with scientific data that the
7 addictive nature of cigarettes was due to
8 nicotine, then he couldn't have provided that
9 information to his patients, could he?

1:5110 A I just can't -- I don't have an
11 opinion about scientific data and what doctors
12 should do.

13 Q Well, I'm getting back to this common
14 knowledge because one of the places that we rely
1:5115 upon common knowledge from is from sources that
16 are authoritative from people that we trust,
17 people like our doctors and our schoolteachers and
18 preachers, people that you've mentioned earlier,
19 correct?

1:5220 A Is that a question?

21 Q Yes, sir.

22 A I'm sorry. I didn't get it.

23 Q Okay. Let me ask it again. Will you
24 agree that we, in forming our common knowledge
11:5225 regarding topics often rely upon authoritative

52 1 figures such as our doctors, our preachers, our
2 schoolteachers in forming our opinions?

3 A I have no expert opinion on that. I
4 don't object to it.

11:52 5 Q Okay. In terms of your expert
6 opinions regarding common knowledge, are you
7 limiting your opinion today about the common
8 knowledge of cigarette smoking and its harmful
9 effects only to the literature that you have
11:52 10 reviewed, or are there other factors that
11 contribute to public opinion beyond just the
12 videotapes that you have furnished to me and the
13 articles that you have supplied to me?

14 A I'd like that question again. I'm
11:53 15 sorry.

16 Q Okay. In -- certainly the opinion
17 that you think that cigarette smoking and its
18 hazardous effects are common knowledge at some
19 point in American history, are you relying solely
11:53 20 upon the periodicals and the videotapes that you
21 have rendered to me, or are there other things
22 that you're additionally relying upon?

23 A I'm relying upon the materials you've
24 received.

11:53 25 Q Okay. Have you read the Cigarette

11:53 1 Papers, which was published by Stanton Glantz?

2 A I know of it, I have not.

3 Q Have you read Smoke Screen that was
4 published by Phil Hilts?

11:54 5 A Yes.

6 Q All right. In that book, he discusses
7 the cigarette industry and their advertising
8 approach after the Graham Wynder report was
9 released in 1953 or so.

11:54 10 Do you recall that?

11 A I think so.

12 Q He discusses a campaign on the part of
13 the cigarette industry to influence American
14 public opinion regarding the health consequences
11:54 15 of cigarette smoking through advertising.

16 Did you read that?

17 A I don't remember it very well, but --
18 I don't remember the book very well.

19 Q Did you read anything about the fact
11:54 20 that they employed a public relations firm to
21 spearhead their campaign to hopefully stimulate
22 sales?

23 A Well, that sounds consistent.

24 Q Yeah. Have you read any other books
11:55 25 that are historical in nature about the cigarette

55 1 industry and its response to this whole area of
2 controversy regarding cigarette smoking and
3 health?

4 A Yes.

11:55 5 Q What other books have you read?

6 A Jordan Goodman, Tobacco and History is
7 a good book.

8 Q When was that authored?

9 A '92.

11:55 10 Q So it would have been released prior,
11 to the time that the Brown & Williamson papers --

12 A Yes.

13 Q -- were released?

14 A There are not many history books that
11:55 15 come right up to the present.

16 Q Do you have an opinion as to whether
17 or not the Brown & Williamson papers are
18 influential in your determination of what was
19 common knowledge to the public during the '50s and
11:55 20 '60s?

21 A I really don't know anything much
22 about the Brown & Williamson papers.

23 Q Did anything in Phil Hilts' book,
24 Smoke Screen, influence your opinions as to
11:56 25 whether or not certain things were a matter of

1 common knowledge during the '50s and '60s?

2 A I can't recall exactly what I derived
3 from that one book.

4 Q Will you agree with me that the
1:56 5 cigarette industry attempted to influence American
6 public opinion regarding the health impact of
7 cigarettes during the '50s and '60s?

8 A You know, I've not done research on
9 what the industry was trying to do.

1:5610 Q Did you read in the book Smoke Screen,
11 that filtered cigarettes were offered by the
12 tobacco companies in an effort to give people a
13 sense of security that the cigarette was not as
14 harmful as it had been in the past?

1:5615 A I can't remember whether we said that
16 or not, but -- I can't remember whether he said
17 that or not. It doesn't sound inconsistent.

18 Q And of course, what he was saying was
19 based on his review of certain tobacco company
1:5720 documents that had actually come from their
21 executives. You're aware of that?

22 A I remember that -- I think I remember
23 that way in his documentation.

24 Q Did you review the parts of the book
1:5725 or do you recall reading the parts the book where

11:57 1 the cigarette industry advertised their products
2 as being low tar and low nicotine to give the
3 public a sense that cigarette smoking wasn't as
4 harmful as they had previously thought?

11:57 5 A I don't remember whether he put it
6 quite that way or not.

7 Q Are you aware that the cigarette
8 industry was able to stimulate sales again through
9 this advertising and marketing campaign that began
11:57 10 in the 1950s that promoted their product as a more
11 healthy product than people were beginning to
12 believe?

13 A I have no opinion about whether their
14 campaign was successful.

11:57 15 Q Did you read the part of the book that
16 discussed the Camel advertising campaign and the
17 fact that Camel cigarettes were marketed primarily
18 in convenience stores that were close to school
19 yards and playgrounds?

11:58 20 A I don't remember, but I read the
21 book. If that's in the book, I read that.

22 Q All right. Will you agree with me
23 that advertising campaigns that take place in
24 convenience stores that are frequented by
11:58 25 teenagers and children can have an -- can have an

11:58 1 impact on the common knowledge of teenagers and
2 children regarding whatever product is being
3 advertised?

4 A I don't know. I have no opinion about
11:58 5 that.

6 Q You've never done any polling with
7 regard to that?

8 A No.

9 Q Ever consulted a psychologist or
11:58 10 psychiatrist about whether or not advertising has
11 an impact on children?

12 A I never did.

13 Q All right. You will agree with me,
14 though, as a matter of common knowledge,
11:58 15 advertising does have an impact on children that
16 kids want to buy things that their peers have, a
17 real peer factor among children, teenagers?

18 A I don't agree with that whole
19 sentence.

11:59 20 Q You don't?

21 A Not that whole sentence as I heard it.

22 Q Let's talk about Nike products for a
23 minute. Are you familiar with Nike products?

24 A Yes.

11:59 25 Q Will you agree that their advertising

59 1 campaign and the fact that Michael Jordan as one
2 of their pitch men has had a fair impact on the
3 youth of America in terms of basketball shoes they
4 buy?

11:59 5 A I don't know anything about that.

6 Q You don't? You never studied that?

7 You've never seen --

8 A I never studied it.

9 Q Have you ever reviewed that in popular

11:59 10 literature?

11 A Not that.

12 Q Do you read US News & World Report?

13 A Frequently.

14 Q Do you read Time magazine?

11:59 15 A Frequently.

16 Q Do you read Newsweek?

17 A I read all of those.

18 Q All right. You care to guess whether

19 or not they've ever had articles on Nike and it's

11:59 20 success in marketing its products?

21 A I can't -- I have no opinion about
22 whether -- whether they've had such articles or
23 not. I didn't -- I don't remember them.

24 Q Okay. Well, will you agree with me
11:59 25 that a person in the '50s or '60s could have said

12:00 1 the same thing regarding articles about cigarette
2 smoking and health that you just said about Nike?

3 A Said the same thing, I said I don't
4 remember whether I saw it.

12:00 5 Q Yeah.

6 A Would I agree that a person might have
7 said such a thing?

8 Q Yeah.

9 A A person might have said such a thing.

12:0010 Q Okay. Will you agree with me that
11 Phil Hilts in his book and some of the other
12 things that you may have read since 1994 suggest
13 that there were internal documents and studies
14 that were conducted by the tobacco industry on the
12:0115 health consequence of cigarettes independent from
16 research that was done by universities,
17 professors, et cetera?

18 A I don't remember whether he did or
19 didn't.

12:0120 Q Well, don't you recall the part of the
21 book where he talks about one of the cigarette
22 manufacturers taking cigarette or nicotine and tar
23 and rubbing it on the back of mice and seeing
24 tumors evolve from that? Do you recall anything
12:0125 about that?

01 1 A I don't recall that.
2 Q You don't recall that?
3 A Rubbing it on mice?
4 Q Yeah.
12:01 5 A Right in his office?
6 Q Right.
7 A I should have remembered that, but I
8 don't --
9 Q No. In the laboratories when they
12:0110 were doing studies.
11 A Vaguely maybe. I --
12 Q Do you recall any of the studies that
13 he suggests the tobacco industry did from their
14 own reports injecting nicotine into the eyelids of
12:0115 rabbits?
16 A No.
17 Q Anything like that?
18 A No.
19 Q Okay. Do you recall any of the
12:0120 medical studies that he says the cigarette
21 manufacturers did on their products during the
22 '50s, '60s, '70s?
23 A No.
24 Q No? You don't recall reading that?
12:0225 A It's -- it's vaguely consistent with

12:02 1 the themes of the book.

2 Q Okay.

3 A But the individual studies don't stand
4 out in my mind.

12:02 5 Q Assume with me that they had done
6 these studies, and I think that there will be
7 evidence at the trial of this case that they, in
8 fact, did these studies. Do you think that that
9 information could have assisted the Texas public
12:0210 policy makers in establishing rules and
11 regulations governing the State of Texas and our
12 use of tobacco if we had known about those
13 studies?

14 A Could have assisted is a hypothetical
12:0215 speculating about something that didn't happen,
16 and I -- as a historian, I have just 30 years,
17 maybe 35 of working with things that did happen,
18 so I don't have any expert or professional --

19 Q Certainly part of the study of history
12:0320 looks back and says, What if? What if certain
21 things had happened? And many historical books at
22 least offer some opinions as to how history might
23 have changed had things happened.

24 A I agree with that.

12:0325 Q Okay.

12:04 1 A They're a very big Madison Avenue, I
2 think still Madison Avenue, public relations firm.

3 Q Are you aware that they have worked on
4 behalf of the tobacco industry for a number of
12:05 5 years?

6 A I am aware.

7 Q All right. So getting back to the
8 question that I had asked about the time frame
9 when you think it was common knowledge in the
12:05 10 State of Texas that cigarette smoking caused lung
11 cancer, you would set that somewhere in the early
12 1950s. Is that your testimony?

13 A Yes.

14 Q Would it be reasonable to conclude
12:05 15 that the cigarette manufacturing companies had
16 access to the same information and should have
17 concluded that in the early '50s also?

18 A I have no opinion about what they had
19 access to or what they might have done with it.

12:06 20 Q Will you agree with me that the
21 cigarette company executives and the people that
22 worked in the cigarette industry were more
23 sophisticated regarding the content of their
24 cigarette, the harmful effects of the cigarette
12:06 25 than the average citizen during the 1950s?

12:06 1 A Of course, I don't know. I have no
2 evidence. But they're the executives of the
3 industry. They must know more than the average
4 citizen.

12:06 5 Q Well, since they know a little more
6 than the average citizen then and had access to
7 the same information that you say establishes
8 common knowledge in Texas back in the early '50s,
9 isn't it reasonable for us to assume that they
12:06 10 should have concluded the same thing back in the,
11 early '50s, that smoking causes lung cancer?

12 A Well, people who had access to the
13 information concluded that there was a danger, but
14 some of them concluded that they were going to
12:07 15 disregard the danger and -- and either not believe
16 it or not -- run a risk. And others concluded
17 they would believe it and act on that belief, so
18 you had all sorts of different behavior patterns
19 in face of the knowledge.

12:07 20 Q Well, will you agree with me that the
21 cigarette companies may have exactly taken one of
22 the paths that you just mentioned and ignored it
23 or not believed it and chose not to accept that
24 information as being true back in the early '50s?
12:07 25 Is that possible?

3:03 1 A Disciplined asking about things that
2 might have happened. What is the thing that could
3 have happened again?

4 Q If they had known about the studies
12:03 5 that the tobacco industries had done on their own
6 that suggested that cigarette -- the products of
7 cigarettes cause cancer?

8 A Well, I haven't speculated about that
9 thing that didn't happen, so you're -- I don't
12:0310 have a settled or professional opinion about that.
11 would have been the result if such a thing had
12 happened.

13 Q Do you have any idea what they would
14 have learned if they had had access to those
12:0315 documents?

16 A No. I don't know those documents, so
17 I don't.

18 Q Do you have any idea what the
19 regulators would have learned if they had had
12:0420 access to those documents?

21 A Same answer.

22 Q Do you have any idea what smokers
23 would have learned if they had had access to those
24 documents?

12:0425 A I don't have the documents.

12:04 1 Q Do you have any idea what nonsmokers
2 would have learned if they had had access to those
3 documents?

4 A I don't know the documents.

12:04 5 Q Do you have any idea what teenagers
6 would have learned if they had had access to the
7 tobacco company documents, the internal company
8 documents?

9 A No.

12:04 10 Q Prior to your testimony here today,
11 have you reviewed any documents from the
12 consulting firm of Hill & Knowlton?

13 A No. No documents from Hill &
14 Knowlton.

12:04 15 Q Have you reviewed -- have you talked
16 with any of the folks with Hill & Knowlton?

17 A No.

18 Q Any of their advertizing people talk
19 to you prior to you giving testimony?

12:04 20 A No.

21 Q At any time, all the way back to 1991?

22 A No.

23 Q Are you familiar with who they are?

24 A Yes.

12:04 25 Q Who are they?

07 1 A You know, I don't have intimate
2 knowledge of the decision-making process of the
3 cigarette companies at this period or any other
4 time, really.

12:07 5 Q Isn't that true, too, with the State
6 of Texas? You don't have intimate knowledge of
7 what any of the people in the State of Texas knew
8 about any of the documents that you published to
9 me?

12:08 10 A Oh, yes. Yes. I can tell you what
11 they were reading and hearing, but I can't tell
12 you what the tobacco industry executives were
13 reading and hearing. I don't know what they
14 were --

12:08 15 Q You can't tell us sitting here,
16 Doctor, today what they were reading and hearing.
17 All can you testify to is what was being
18 published; isn't that true?

19 A No, that's not -- that's not true.
12:08 20 That's partly true. There is abundant evidence
21 that people reported that they had read, and the
22 public opinion polls showed changing opinion in
23 response to the information, so there's much
24 evidence that reinforces the view the information
12:08 25 was being heard.

2:08 1 Q What information have you furnished to
2 us in your disclosure that shows that someone
3 within the State of Texas heard or read any of the
4 information that you have given us?

2:08 5 A Oh, goodness, it's shot through with
6 the polls we've talked about, and the polls start
7 high and then rise. And then people's behavior.
8 There is this enormous shift to the low tar and
9 the light cigarette and the low nicotine
12:0910 cigarette, a shift that caught the industry by
11 surprise, apparently, in some of the things that I
12 had read. People switch. There's also a lot of
13 quitting, a lot of quitting, a lot of quitting.

14 Q Well, so then if we assume that all of
12:0915 that information that you say made its way to the
16 folks of the State of Texas, we can assume that
17 that same information made its way to the
18 cigarette companies, can't we?

19 A They live in America. They --

12:0920 Q And so if we're going to hold the
21 State of Texas responsible for having the common
22 knowledge that smoking caused cancer in the early
23 '50s, we ought to hold the cigarette companies
24 responsible for having that knowledge too,
12:0925 shouldn't we?

3:09 1 A I never said anything about holding
2 anybody responsible.

3 Q Well, why in the world else is your
4 testimony being offered in this case? Do you have
12:09 5 any idea, any earthly idea at all?

6 A Why my testimony is being offered?

7 Q Right.

8 A To provide historical background, I
9 suppose, to the court.

12:1010 Q Well, don't you suspect that your
11 testimony is going to be relied upon by these
12 cigarette manufacturing defendants to suggest to
13 the jury that they should not be held responsible
14 because this was a matter of common knowledge as
12:1015 Dr. Graham has testified to and, therefore, we
16 shouldn't be held liable in a products liability
17 because everybody knew it was bad for you? Don't
18 you expect them to make that argument to the jury?

19 MR. STOVER: Jim, I'm going to
12:1020 object at this point. I realize that we're not
21 allowed objections except with respect to
22 privilege, but you're getting argumentative with
23 the witness. You posed a very long question that
24 includes asking him to -- to surmise legal
12:1025 theories, which he is not here to do, and I'm

12:10 1 going to -- I'm going to suggest that the question
2 is improper. If Dr. Graham understands it, he can
3 try to answer it, but I -- I really think it's not
4 only improper form, it's just an improper question
12:10 5 of this witness.

6 Q (By Mr. Morris) Do you understand why
7 your testimony is being offered in this case?

8 A That's the question now?

9 Q Yes.

12:1110 A In order to get historical background
11 into the court.

12 Q Do you understand that your testimony
13 is going to be offered to assist the tobacco
14 companies on their side of the litigation?

12:1115 A You know, what their thinking is, I do
16 not know.

17 Q If we assume that it's your position
18 that the State of Texas commonly knew that
19 cigarette smoking caused cancer in the '50s, and
12:1120 emphysema later on at some point, whenever it got
21 into the literature, and that nicotine was the
22 addictive agent in cigarettes at some point, can
23 we assume that every time the State of Texas knew
24 through the dissemination of all this information
12:1225 that the tobacco industry new also?

12:12 1 A Without responding to the second part
2 of your question, the first part I don't agree
3 with.

4 Q Okay. What -- what about the first
12:12 5 part do you not agree with?

6 A I -- I'm -- it's my position, my
7 opinion, that it was common knowledge that from
8 many respected people, doctors, moral leaders,
9 educational leaders, athletes, from many quarters
12:1210 and many people there was a -- there was a -- an,
11 impressive indictment, an impressive range of
12 charges which would have -- it was common
13 knowledge that those were -- some people were
14 immediately persuaded, some people seem not to
12:1315 have been persuaded. It's hard to tell what
16 people were, but I'm not arguing that people --
17 everybody in Texas that it was common knowledge
18 that it did. I'm arguing that it was common
19 knowledge that it was alleged that it did.

12:1320 Q Okay. So you're saying that the only
21 common knowledge that you're prepared to testify
22 about, then, when this trial begins September 29th
23 is that it was common knowledge that these things
24 had been alleged?

12:1325 A In the '50s, the polls ask about have

2:13 1 you heard. Later on, the polls ask if you
2 believe.

3 Q And when was that asked?

4 A I don't have the first wording of -- I
2:13 5 don't have the date of the first wording of the
6 polls at all.

7 Q Can you give me your best guess?

8 A Late '60s.

9 Q Okay. So are we up till the -- to the
2:13 10 late '60s in our position that it wasn't until the
11 late '60s that people -- that we can show -- at
12 least through the documents that you've provided,
13 that we can show that the public commonly knew
14 that there was a causal link?

2:14 15 A The question -- could you reword, I'm
16 sorry.

17 Q Can we agree that it's not until the
18 late '60s that the State of Texas commonly knew
19 that there was a causal link?

2:14 20 A No. I wouldn't say that. In the
21 absence of polls, which is a form of data. Polls
22 aren't perfect.

23 Q Uh-huh.

24 A In the absence of polls, there's still
2:14 25 a lot of evidence that's not at the level of

12:14 1 polls. It's not polls. There's a lot of evidence
2 that there was common knowledge and that was
3 commonly believed. How many people actually would
4 answer "I believe" other than "I heard that." I
12:14 5 can't make an answer as to what the percentage of
6 people is that would fit in either one of these
7 categories until the polls start sharply asking
8 the question in a different way. I don't -- I
9 don't know whether common knowledge -- it's a
12:15 10 mixture of I heard it and I believe it, and I've
11 heard it and I -- I'm not going to say whether I
12 believe it or not.

13 Q Well, will you say that if -- if all
14 the polls show is that I've heard it, then we
12:15 15 don't know what the person believes one way or
16 another.

17 Will you agree with that?

18 A Any individual person, you know that
19 there is this -- some people quit.

12:15 20 Q Well, you can answer that question
21 simply. If all the polls says is, Well, we've
22 heard about it, we don't know what that person
23 believes one way or the other?

24 A We don't what that -- I don't know
12:15 25 what person you're talking about.

2:15 1 Q I'm talking about any person.

2 A We know that so many people believe it
3 that they attack the product, they ban together in
4 groups, they admonish their children in firm
2:15 5 tones. That's belief, that parental belief, the
6 clergy, the educators who spend hours in classroom
7 when they should be doing arithmetic, some would
8 say, are -- are talking about the evils of
9 tobacco. I'd call that belief. A lot of rich
2:1610 evidence of belief.

11 Q They are advocates. Will you agree
12 with that?

13 A They are advocates of don't spoke that
14 stuff.

2:1615 Q Okay. And will you agree that there
16 were advocates of do smoke this stuff during the
17 same time period?

18 A I'm sure. Yes.

19 Q And won't you agree that the principal
2:1620 advocate of that were the cigarette industry
21 itself?

22 A I'm sure they were in favor of people
23 smoking.

24 Q And in order to try to get that point
2:1625 across to the general public, they published

12:16 1 things like ads that smoking a particular
2 cigarette was more healthy than another one?

3 A Industries advertise their products.

4 Q All right. And in fact, will you
12:16 5 agree that there's at least some evidence that the
6 tobacco industry pampered to teen smokers and
7 children in their advertizing campaigns using
8 things like Joe Camel?

9 A I have no opinion about that. I've
12:17 10 seen the controversy. I have no personal opinion.

11 Q Did you do any study to determine what
12 portion of the population in the State of Texas
13 are either illegal immigrants or legal immigrants?

14 A I may have seen some figures. I don't
12:18 15 remember them.

16 Q Did you furnish those figures to me in
17 your disclosure?

18 A I don't know whether figures on
19 illegal immigrants and immigrants generally in the
12:18 20 State of Texas are in those files or not. I don't
21 know.

22 Q Sitting here today, can you give me an
23 estimate percentagewise how many Americans -- how
24 many Texans are illegal immigrants or legal
12:18 25 immigrants?

2:18 1 A Or legal immigrants?

2 Q Or legal. Legal or illegal.

3 A Themselves legal, not yet

4 naturalized?

2:18 5 Q Right.

6 A That's not my expertise.

7 Q Will you agree with me that as far as

8 the material you furnished here today, you can't

9 testify as to whether or not any of that material

2:18 10 ever reached any illegal or legal immigrants?

11 A I can testify that the State, as well

12 as private nonvolunteer -- "Volags," "NGO" made

13 strenuous efforts, or they made many efforts --

14 it looked strenuous to me -- to produce Spanish

2:19 15 language materials with respect to tobacco and its

16 hazards and to distribute those.

17 Q Will you agree with me that you

18 haven't reviewed any significant amount of Spanish

19 written materials regarding tobacco and its health

2:19 20 consequences?

21 A I don't know what "significant"

22 means. There -- I have reviewed many.

23 Q Well, Doctor, in the box that you

24 provided, the six boxes, four and a half that you

2:19 25 produced to me, there was only one reference that

19 1 I could find, it's Bates Number 408525, that had
2 anything in Spanish. And that's called The
3 Smoking Habit.

4 Have you seen this document?

12:19 5 A I have.

6 Q All right. Other than this document,
7 are you aware of any other box -- other document
8 within the six boxes that you provided to me in
9 the disclosure that talks about smoking?

12:20 10 A Yes. In Spanish, yes. You missed
11 some.

12 Q I missed some?

13 A Yes.

14 Q Okay. I'll look again.

12:20 15 Who are the other articles published
16 by?

17 A They're published by the State
18 Department of Health or the State Department of
19 Education or the American Cancer Society has
12:20 20 Spanish language publications as I recall, maybe
21 the American Lung Association. In our research,
22 we found it difficult to recapture the documents
23 that the State sent out because the State doesn't
24 keep good archives, but we did the best we could,
12:20 25 and we saw many Spanish language. What they

12:20 1 represent is hard to determine. They represent an
2 effort in Spanish, but I can't say more than that
3 at this time.

4 Q Okay. Were you required to obtain any
12:20 5 type of approval from your university before you
6 began this project?

7 A No.

8 Q All right. Back in 1991 when you
9 first started talking to the cigarette industry
12:2110 and it may have been before that, I forget which,
11 state you said was the first time you talked to
12 the lawyers of the cigarette industry, but at that
13 time, did you go speak to anyone at your
14 university and say, look, these guys are asking me
12:2115 to do some research for them, will it present any
16 type of conflict of interest?

17 A No.

18 Q Do you have any guidelines regarding
19 conflict of interest at University of North
20 Carolina?

21 A There are broad guidelines which are
22 broad.

23 Q Okay. And did you conclude that there
24 wasn't anything wrong with you doing this research
12:2125 and the case on behalf of the tobacco industries?

21 1 A Yes. Professors consult.

2 Q Is UNC Wilmington to any extent

3 supported by tobacco money?

4 A I don't know.

12:22 5 Q What about UNC Chapel Hill?

6 A I don't know, but it's -- I don't

7 know. It's in the State of North Carolina. I

8 don't know.

9 Q Does the tobacco industry contribute

12:2210 fairly heavily to both of those institutions?

11 A I don't know, but --

12 Q In terms of grants and --

13 A I don't know. I don't know.

14 Q You've never seen that in any

12:2215 advertisement?

16 A I'm sure they contribute. You said

17 "heavily." I don't know what "heavily" means,

18 but I'm sure they contribute. They're a big

19 industry in the state.

12:2220 Q Okay. And so would it be fair for us

21 to assume that UNC Chapel Hill and Wilmington may

22 receive some funding from the tobacco industry for

23 research that's done there, albeit not your own?

24 A You said is that reasonable?

12:2225 Q Yes.

2:22 1 A It's not my expertise, but I think
2 it's reasonable.

3 Q All right. Do you feel like there's
4 still a controversy regarding whether the
2:22 5 cigarette industry manufacturer of cigarettes in
6 such a composition to provide a specific amount of
7 nicotine --

8 A I don't --

9 Q -- do you think that's still a matter
2:23 10 of controversy?

11 A Of course, I don't know anything about
12 what they do.

13 Q From your review of the historical
14 data?

12:23 15 A Yeah. Historical discussion of that
16 question?

17 Q Yeah.

18 A I think that's receded in the
19 discussion that I read. It was very -- it was a
12:23 20 big issue in '94. It's not as big as it was.

21 Q It may not be as big an issue, but
22 would you say that there is still a controversy
23 about whether or not the tobacco industry
24 cigarette companies provide cigarettes with
12:23 25 specific amounts of nicotine?

12:23 1 A That the cigarettes are manufactured
2 to have nicotine in them?

3 Q Specific amounts of nicotine.

4 A I don't know. That's manufacturing.
12:23 5 I don't know about manufacturing.

6 Q Would you say it's still a matter of
7 controversy in the literature as far as from a
8 historical perspective looking back at the
9 literature?

12:24 10 A I don't know whether it is or not. It
11 was in '94.

12 Q Okay. Would you say it's still a
13 matter of controversy as to whether or not
14 cigarette smoking causes lung cancer? Would you
12:24 15 say that's still a matter of controversy in the
16 American public?

17 A In my materials that I read in the
18 '90s recently, most recent materials, I don't --
19 I can't say there's no controversy, but it's --
12:24 20 that's not a big issue of debate. There are
21 bigger issues of debate.

22 Q Would you say that the opinion of
23 most -- would you say that there are any credible
24 sources out there suggesting that cigarette
12:24 25 smoking does not cause lung cancer?

1:24 1 A I couldn't cite one.

2 Q Can you cite any credible sources out
3 there that suggest cigarette smoking does not
4 cause heart disease?

1:25 5 A May cause.

6 Q Who?

7 A May cause.

8 Q May cause.

9 A Right now I couldn't cite one.

10 Q Okay.

11 A This is medical -- you're speaking of
12 medical?

13 Q Right. But I'm asking you of your
14 historical review. I mean, is --.

2:25 15 A In the historical, I couldn't cite
16 one.

17 Q All right. Can you cite any credible
18 source that has suggested recently or that has
19 popularly accepted recently that emphysema is not
2:25 20 caused by cigarette smoking?

21 A None comes to mind.

22 Q Okay. In reviewing your information,
23 the six boxes or so of documents that you compiled
24 over the last several months, have you prepared
2:25 25 any handwritten reports regarding those documents?

12:25 1 A Occasionally I will write out
2 something for a day or so to read the next day --
3 Q Uh-huh.
4 A -- to fix in my mind and then throw it
12:26 5 away.
6 Q You throw it away. So you haven't
7 kept any of your handwritten notes?
8 A No. I throw them away after I've
9 fixed it.
12:2610 Q Have you prepared any charts or
11 diagrams which will summarize the documents that
12 you have reviewed?
13 A No.
14 Q No?
12:2615 A Charts or diagrams, no. I haven't
16 done that.
17 Q Do you anticipate doing that between
18 now and the time of trial?
19 A Well, based upon my one experience at
12:2620 trial, I believe that I will -- I expect to be
21 asked to select some material for display. I
22 mean, that's what happened before.
23 Q When you say selection of material for
24 display, do you mean pull out particular articles,
12:2625 have them blown up and show them to the jury?

2:26 1 A That's what we did before.

2 Q Okay. I'm talking about an
3 independent summarization of material into a --
4 into a diagram or into a chart.

2:26 5 A I don't know if I'll be asked to do
6 that or not.

7 Q Who would ask you to do that?

8 A The lawyers.

9 Q Okay. The lawyers for the cigarette
2:27 10 companies?

11 A Yes.

12 Q All right.

13 A I guess. I'm not a lawyer. Somebody
14 else might ask me.

2:27 15 Q Okay. Between now and the time of
16 trial, do you intend to conduct any polling in
17 Texas?

18 A No.

19 Q Between now and the time of trial, do
2:27 20 you intend to ask anyone to conduct any polling in
21 Texas?

22 A No.

23 Q Mr. Barringer included?

24 A Right. Right.

2:27 25 Q Okay. The last kind of area of

12:27 1 inquiry I'd like to go through with you, we talked
2 about the three books that you published prior to
3 1991. Have you published any books since 1991?

4 A Yes.

12:28 5 Q Okay. What books have you published?

6 A Two.

7 Q Okay. Can you tell me what the title
8 of those books are?

9 A In 1992 I published a book called
12:2810 Losing Time, The Industrial Policy Debate in the
11 United States.

12 Q The Industrial Policy Debate?

13 A Yes.

14 Q And what was that about?

12:2815 A It's was the question about whether
16 the United States should, in order to become
17 internationally competitive or remain
18 internationally competitive, adopt, develop an
19 industrial policy along the lines that the
12:2820 Japanese are said to have.

21 Q Is there anything in that book that
22 relates to smoking?

23 A I don't think so.

24 Q What was the next book?

12:2825 A The next book was A Limited Bounty, a

12:28 1 History of the United States since 1945.

2 Q And what was that about?

3 A That's a history of the United States
4 since 1945. It's kind of a textbook.

12:28 5 Q How long is that book?

6 A Three hundred forty-five pages.

7 Q That's pretty short for the entire
8 history of the United States?

9 A Oh, it's very --

12:29 10 Q 1900 to 1945, will you agree --

11 A I'm sorry. I gave the wrong dates.

12 Perhaps I gave the wrong dates. It's 1945 to the
13 present.

14 Q Okay. But still a short book?

12:29 15 A I agree with you about that, and
16 we're -- the market niche we're aiming at dictated
17 a somewhat compact book.

18 Q Okay. What was the market that you
19 were looking at?

12:29 20 A People who want to adopt or read a
21 relatively short well-written history of the
22 United States since World War II that pays
23 significant attention to all main themes,
24 including the environment, and many other things.

12:29 25 This is my book. It's my book.

12:29 1 Q Okay. Including the environment.
2 Does -- does it discuss the cigarette industry?

3 A The cigarette industry. It discusses
4 the smoking and health controversy. I don't think
12:30 5 the cigarette industry as much.

6 Q And who is this book published by?

7 A McGraw-Hill.

8 Q When was it first published?

9 A 1996.

12:30 10 Q Where would it be for sale?

11 A I wish I could tell you in any book
12 store.

13 Q Okay.

14 A That's not true.

12:30 15 Q Is it a Texas relied upon by
16 university students or --

17 A Yes. And I hope in Texas there have
18 been some adoptions, but I think you'd -- a book
19 store would order it, but --

12:30 20 Q Do you have any coauthors?

21 A No.

22 Q And how much of the book was devoted
23 to the cigarette controversy in America?

24 A I haven't looked at it for that, but I
12:30 25 think you'd find a discussion of it in '64.

.2:30 1 Q Okay.

2 A And you might find another discussion
3 of it later on toward the end. I don't remember
4 But it's there once or twice.

.2:30 5 Q Was this textbook peer reviewed?

6 A Yes.

7 Q Were any of the papers that you have
8 furnished to me in your disclosure relied upon in
9 forming the opinions that you state in your

.2:3110 textbook?

11 A My research on this subject clearly
12 informed what I wrote in that book.

13 Q And who peer reviewed that book for
14 you?

12:3115 A They sent it out to six or seven
16 people. They kept them anonymous so that I don't
17 know.

18 Q Do you discuss this -- this review of
19 what was common knowledge to most Americans in
12:3120 that textbook?

21 A I can't remember how I handled the
22 issue. I often can't remember until I open the
23 book myself.

24 Q Have you done any evaluation

12:3225 whatsoever as to whether or not documents you

32 1 furnished to me in your disclosure would be
2 documents regularly -- regularly reviewed or read
3 by teenagers?

4 A Have I done any evaluation?

12:32 5 Q Yes, sir.

6 A I've done no evaluation, but --

7 Q I understand you have an opinion about
8 it?

9 A Yeah. Right.

12:32 10 Q But I don't want your opinion about
11 it.

12 A Okay.

13 Q I just want to know whether you
14 performed

12:32 15 any evaluation.

16 A Okay.

17 Q Did anyone on your behalf perform an
18 evaluation as to whether or not any of those
19 documents reached teenagers?

12:33 20 A No.

21 Q Okay. Now give me your opinion. What
22 do you think? Do you think that the documents
23 that you furnished to me are documents that likely
24 would have been read and reviewed by teenagers at
12:33 25 the time that they were published?

2:33 1 A The documents reflect a broad public
2 debate discussion about smoking at every level. I
3 make the assumption that teenagers inhabited that
4 world and very soon encountered parental, school,
2:33 5 religious leaders, athletic coaches, that they
6 very soon encounter that very same warnings.

7 Q Okay. You mentioned the word
8 "warning," and that's the first time that that's
9 come up today.

2:3310 Will you agree with me that many of
11 the documents that were furnished to us are not
12 documents that warn anyone about the ill effects
13 of cigarette smoking but are merely informative
14 articles about smoking and self-consequences?

2:3415 A The question was many of the
16 documents?

17 Q Yes, sir.

18 A Many being -- many are informative,
19 and many are informative and carry a clear
2:3420 warning, and many are mostly warning. I -- I
21 don't know how to respond to the question.

22 Q Okay. Will you agree that there are
23 other things that are in the public domain that
24 are not contained in your disclosure to me that
2:3425 took a different position with regard to cigarette

34 1 smoking and its hazardous effects?

2 A There are certain other things in the
3 public domain that I didn't give you.

4 Q Okay. For instance, there -- I didn't
12:34 5 get to see a copy of any -- any of the ads where
6 tobacco was talked about, especially smokeless
7 tobacco, as a safe alternative to cigarettes, but
8 you will agree that that was in the public domain?

9 A There may -- I think there are some
12:35 10 there scattered about in the newspapers. If you,
11 looked in the newspapers, I think you'd see some.

12 Q Okay. And certainly athletes like
13 Earl Campbell, a Texan, Walt Garrison, a Texan,
14 were used to influence the public to begin using
12:35 15 smokeless tobacco.

16 You will agree with that?

17 A If the question is, Am I aware that
18 athletes were -- appeared in advertising, I'm
19 aware.

12:35 20 Q Yeah. And you will also agree that
21 certain people in the entertainment industry have
22 been paid by tobacco to advertise their products?

23 A I don't know that they were paid, but
24 I know from my research that some celebrities in
12:35 25 the entertainment industry appear occasionally in

12:35 1 ads. I know that.

2 Q Well -- and you've reviewed literature
3 that suggests that Sylvester Stalone, for
4 instance, was paid half a million dollars to smoke
12:35 5 a particular brand in cigarette in all of his
6 movies?

7 A I saw that, I think.

8 Q Do you think that was done to
9 influence the public to smoke the same type of
12:36 10 cigarettes?

11 A I have no direct knowledge of why they
12 did it.

13 Q But it is a historical piece of
14 information that we've not been supplied with,
12:36 15 correct?

16 A I don't know whether in that -- we,
17 you mean, in the disclosure --

18 Q Yes, sir.

19 A I don't know whether that story is in
12:36 20 there or not. I saw it, which suggests that it
21 might be in there. Maybe I saw it in my general
22 reading. Maybe I saw it.

23 Q Okay. Do you attach any historical
24 significance to the testimony that was given by
12:36 25 the chairman of Liggett a couple of days ago in

12:36 1 the Florida case?

2 A I try not to attach historical
3 significance to things that are so close to the
4 present.

12:36 5 Q Okay. Well, when the Japanese
6 surrendered to Admiral Nimitz at the end of World
7 War II --

8 A That was immediately obviously of
9 historical significance.

12:37 10 Q That was of significance, historical
11 significance?

12 A I would have agreed.

13 Q Yeah. When President Nixon resigned
14 from office. --

12:37 15 A I immediately agree.

16 Q All right. Are you aware -- aware of
17 any act by any tobacco company executive that is
18 of greater significance than the admissions made
19 by the chairman of Liggett earlier this week?

12:37 20 A I think that this will take time.
21 This is the historian. I think that this will

22 take time to know the significance of any of
23 that. This is not in the category of Nixon
24 resigning and flying off or the category of

12:37 25 Admiral Nimitz taking the sword or whatever. It's

12:37 1 in the category of it's going to take some time to
2 know that.

3 Q How did it hit you as a historian?
4 And being that you've been testifying now for the
12:37 5 tobacco industry for five years or longer and, you
6 know, they're the folks that have retained you to
7 be involved in this enterprise, when one of the
8 chiefs comes out and says, you know, we've been
9 withholding information and we've been doing
12:38 10 things that I guess someone could say looks
11 unethical from a business standpoint. Does that
12 concern you at all?

13 A The question is does it concern me
14 or -- is that the question?

12:38 15 Q Yes.

16 A I don't know what concern.

17 Q Well, from the standpoint of whether
18 or not you're doing the right thing by testifying
19 here today?

12:38 20 A Well, that has nothing to do with
21 that. No, it didn't evoke those feelings in me.

22 Q Okay. Fair enough.

23 MR. MORRIS: I believe those are
24 all the questions I have.

12:39 25 MR. PURVIS: Jim, I'm advised

39 1 that the 1954 Gallup poll that Professor Graham
2 referred to and which was produced is identified
3 as Bates Number 404065, and I hand you that
4 number.

12:39 5 Could we take just a couple of
6 quick minutes and caucus and see if we've got
7 anything?

8 MR. MORRIS: Sure.

9 THE VIDEOGRAPHER: We're off the
12:39 10 record. The time is 12:39.

11 (A recess was taken.)

12 (Deposition Exhibit 1
13 was marked.)

14 THE VIDEOGRAPHER: We're back on
12:49 15 the record. The time is 12:49.

16 EXAMINATION

17 BY MR. PURVIS:

18 Q Professor Graham, I just have a couple
19 of questions.

12:49 20 Do you recall at the beginning of the
21 deposition when Mr. Morris asked you about a
22 document title Otis L. Graham, Ph.D.?

23 A Yes.

24 Q And I'm handing you what I've marked
12:49 25 as Graham Deposition Exhibit 1 and ask if that is

2:49 1 the same document you and Mr. Morris were
2 discussing earlier?

3 A Yes.

4 Q Do you recognize that as your expert
2:49 5 disclosure in this litigation matter?

6 A Yes.

7 Q Does that expert report accurately
8 reflect the opinions you anticipate giving at the
9 time of trial in this matter?

2:50 10 A Yes.

11 Q Does it accurately describe the
12 materials that you have relied on in arriving at
13 that opinion?

14 A Yes.

2:50 15 MR. PURVIS: No other questions.

16 THE VIDEOGRAPHER: This concludes
17 the deposition. The time is 12:50.

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STATE OF TEXAS

COUNTY OF DALLAS

I, JAMIE K. ISRAELOW, a Certified Shorthand Reporter duly commissioned and qualified in and for the State of Texas, do hereby certify that there came before me on the 24th day of July, 1997 in the offices of Shook, Hardy & Bacok, located at 801 Pennsylvania Avenue, Suite 600, Washington, D.C., the following named person, to-wit: **OTIS L. GRAHAM, JR.**, who was duly sworn to testify the truth, the whole truth, and nothing but the truth of knowledge touching and concerning the matters in controversy in this cause; and that he was thereupon examined upon his oath and his examination reduced to typewriting under my supervision; that the deposition is a true record of the testimony given by the witness, and signature of witness is to be before any notary public.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.